507.

SUPREME COURT OF THE UNITED STATES.

No. 154.

JOSHUA KENNEDY'S HEIRS AND EXECUTORS, APPELLANTS,

vs.

SIDNEY E. COLLINS.

APPEAL FROM THE CIRCUIT COURT U. S. FOR THE SOUTHERN DISTRICT OF ALABAMA.

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UNITED STATES OF AMERICA,
Southern district of Alabama:

Pleas had before the honorable the circuit court of the United States, for the fifth judicial circuit and southern district of Alabama, at a term thereof, begun and held in and for said district, at Mobile, on the second Monday of April, in the year of our Lord one thousand eight hundred and forty-seven. Present, his honor William Crawford, judge of said court.

Be it remembered, that heretofore, to wit, on the twenty-seventh day of April, in the year of our Lord one thousand eight hundred and forty-four, Sidney Eugene Collins filed in said court his bill of complaint against William R. Hallett and Robert L. Walker, executors of the last will and testament of Joshua Kennedy, deceased, John H. Hastie, Saluda Hastie, John R. Meslier, Mary Meslier, Clarissa Kennedy, Augusta Kennedy, Joshua Kennedy, James Innerarity, Samuel Kitchen, James Campbell, and the President and Directors of the Branch of the Bank of the State of Alabama, at Mobile, in the words and figures following, to wit:

Bill of complaint.

To the honorable the judges of the circuit court of the United States, for the southern district of Alabama.

Sidney Eugene Collins, a citizen of the State of Missouri, brings this his bill of complaint against William R. Hallett and Robert L. Walker, executors of the last will and testament of Joshua Kennedy, deceased, John H. Hastie and his wife Saluda, Augustus R. Meslier and his wife Mary, Clarissa Kennedy, Augusta Kennedy, and Joshua Kennedy, the said Saluda, Mary, Clarissa, Augusta, and Joshua, being heirs at law of Joshua Kennedy, deceased, and the three last being under the age of twenty-one years, James Innerarity, Samuel Kitchen, William Kitchen, James Campbell, and the President and Directors of the Branch of the Bank of the State of Alabama, at Mobile, all of whom are citizens of the State of Alabama.

Your orator sheweth, that he is the son and heir at law of Joseph Collins, deceased, who died in the country south of the 31st degree of north latitude, between the Iberville and Perdido, about the year 1812. He left three children, whose names were, George, Joseph, and Sidney Eugene, to whom he devised his real and personal property, a copy of which will is filed herewith, with certificates of probate as exhibit A. George died some years ago, (1836 or 1838,) and Joseph, when a youth, both of them without having been married and intestate; your orator is the heir at law of his two brothers.

Your orator further sheweth to your honor, that his father obtained

from the Spanish Government a grant for a parcel of land in the city of Mobile, a copy of which, taken from the archives in the custody of the clerk of the county court for Mobile county, is hereto attached, marked exhibit No. one. This grant conflicted with one of an older date, then held by William E. Kennedy, or in which William E. Kennedy had an interest given to Alexander Baudain. To avoid the difficulty, an agreement was made between William E. Kennedy and the father of your orator, dated on the 21st November, 1806, and which is fully set forth in the deed from the said William E. Kennedy to James Innerarity, a copy of which is hereto attached, marked exhibit No. two. Your orator states that he has not any of these originals, that he presumes they are in the possession of Hallett and Walker and James Innerarity, and he prays they may be produced on the hearing. Your orator states that the lands referred to in the deed last mentioned were improved and occupied for the objects and purposes declared in the articles of agreement, while the Spanish Government held possession of this territory, and when the territory came to the possession of the United States both grants were laid before the commissioners appointed to inquire of the titles. The report of Mr. Crawford, commissioner, was not favorable to either. The claim of Collins was not revived, but that of Baudain was by William E. Kennedy; a favorable report was made of the evidence in July, 1820, and in May, 1822, it was confirmed by act of Congress; a certificate has issued on the said claim, but no official survey has been made and returned which has been adopted as the location, and no patent has ever issued; your orator will produce on the hearing the official record of the transactions in the land office on this claim. It will be evident from that record, as well as from the deed to James Innerarity, that the proofs in the grant to the portion of your orator were withheld by the said Innerarity, in consequence of the said deed.

Your orator further sheweth to your honor, that the said William E. Kennedy, who is now deceased, made a deed to the defendant, Samuel Kitchen, which bears date about one month earlier than the deed to the said James Innerarity. This deed was executed in the presence of Joshua Kennedy and Diego McBoy; Joshua Kennedy being also a witness to the deed of William E. Kennedy to James Innerarity. This deed, though made (according to its date) the 28th January, 1820, was not received in the office of the clerk for record till the 29th of March following. In a deposition of Samuel Kitchen made in a suit lately pending in the court of chancery at Mobile, between the heirs of William E. Kennedy against the executors and heirs of Joshua Kennedy aforesaid, the said Samuel Kitchen gave the following account of this deed:

That the said deed was delivered to him, the said Samuel Kitchen, by Joshua Kennedy, that Joshua Kennedy paid William E. Kennedy the consideration money for the said Kitchen, that the said Kitchen had no reason to suppose it antedated; and that he was fully aware that the said William E. Kennedy had made a devise to James Inne-

rarity, the validity of which he was willing to risk and test; your orator states that he will produce the deposition duly certified at the hearing, so that the said Kitchen's statement may appear in his own words.

Your orator further sheweth to your honor, that the said Samuel Kitchen was the father-in-law of Joshua Kennedy at the time, and resided in Baldwin county, some twenty-five miles from the court-house; is a plain man; and it is probable that Joshua Kennedy communicated to him nothing that did not suit his object; for the said Joshua was a man of surprising reach of mind, deliberate, secret, cautious, unscrupulous, and persevering, who bent all his energies to the acquisition of lands and land claims; and who foresaw at that day the favorable location of the city of Mobile, and that the said parcel of land must sooner or later make his fortune.

The said Wm. E. Kennedy, about the date of these proceedings, had begun to give way under the consequences of his dissipated and irregular habits; he had become dependent upon his brother for advice, counsel, assistance, and yielded to him in this case against the dictates of his better nature. Your orator charges that the deed of Samuel Kitchen was a contrivance of Joshua Kennedy to defeat and to defraud the claims of your orator and his brothers, all of whom were small children at the time, and ignorant and unconscious of these transactions. Your orator states that no deed from Samuel Kitchen to Joshua Kennedy is to be found upon the records of the county. That the same is secret, though your orator is aware that the property in dispute is in the hands of the executors and heirs of Joshua Kennedy, conveyed by testamentary papers in 1838, a short time before his death. Your orator proposes now to show to your honors the contrivances resorted to by the said Joshua to overcome the force of the articles of agreement aforesaid, and the solemn acknowledgment and confirmation of them by the said Wm. E. Kennedy in 1820. Some time in the year 1824 Joshua Kennedy procured a deed, absolute in its terms, upon the consideration of $10,200, from Wm. E. Kennedy, for all his interest in these considerable tracts of land in the city of Mobile, known as the Price, McVoy, and Alex. Baudain claims; the last being the claims hereinbefore mentioned. Your orator states that the said Joshua Kennedy immediately revived the Price claim specified in the said deed, upon which unfavorable reports had been made by the commissioner before that time, and succeeded in effecting its confirmation by act of Congress in 1829; that he procured its location in 1829 and '30, so as to cover the land embraced in the Baudain claim, which had been previously confirmed, and which is saved in the act of Congress, and by the patent issued to Price's assignee, it having been previously confirmed. The said claim, however, had never been located and officially surveyed; and although it is the older and better title, although the confirmation is more definite and complete, yet the said Joshua preferred to sink the entire claim derived through Alexander Baudain, and to appear as the proprietor of these lands as the representative of Thomas Price. Your orator states that on the map of the survey of the Price claim made by

the Spanish government, the grant to Baudain and to the father of your orator aforesaid appears. That the deed from Price to Wm. E. Kennedy, under which the said Joshua Kennedy claims, bears date one day after the articles of agreement aforesaid, and the agreement for the transfer was evidently before, and the said Kennedy continually recognised the claim of your orator's father up to 1820, and after the acquisition of the Price title. Your orator charges that the employment of the Price claim in the manner aforesaid is one of the evidences of the anxious fear of the said Joshua of your orator's rights, of which the antedated deed to Kitchen was another expression. Your orator further showeth to your honors, that the Spanish grant to Price, bearing date in 1806, has at all times rested under strong imputations. It was made for an unusual quantity of land, and its call for the granted lots of the town was strange and unusual, leading to uncertainty and fraud. It embraced nearly the whole of the city of Mobile as it existed at the date of the grant, and encroached on the lands set apart for public purposes, (fort property.) The considerations on which it purports to have been based, your orator believes, and therefore charges, to have been entirely unfounded. Your orator further states, that the claim was revived before the commissioners at St. Stephen's after Joshua Kennedy had been to Havana, in 1825 or '6, and new documents were then exhibited to the commissioners for the examination of land titles, and that the frame of the title was altered after that time. Your orator states that it was never supposed that this claim interfered with the Baudain claim, and that Wm. E. Kennedy was solely interested in both during the whole period of the Spanish supremacy, and until his conveyance in 1824 to Joshua Kennedy. Your orator further showeth to your honor, that in the year 1832 there appeared on the docket of the circuit court of Mobile county a cause between William Kitchen and James Innerarity. There is no order found in the minutes of the court, nor any entry concerning it, save the final decree. There is no bill, answer, or exhibit, nothing that affords any key to the claim of the said William Kitchen against the said Innerarity; there is simply a decree directing the said Innerarity to convey the said land to the said Kitchen on the payment of a claim set forth in his answer; and the deed hereto attached, marked exhibit No. 3, is that deed taken from the records. Your orator charges that this conveyance was made under some agreement between Joshua Kennedy and the said Innerarity, and that the name of Kitchen was merely employed to effectuate the matter, though prior to this the Price claim had been located and surveyed, and the location and survey covered this parcel of land. Your orator further sheweth to your honor, that as well as he can ascertain, and as he fully believes, he was born in the year 1810. His brother George was older than himself. Your orator had never resided in Alabama till the year 1827, and at that time he became an apprentice to a carpenter to learn the trade. His elder brother was employed or apprenticed in a printing office as a journeyman. In the year 1829 George made the deed to Wm. Kitchen, hereto attached, and in 1830 your orator executed

the deed to the same individual, hereto attached, both copies taken from the records of the county clerk of Mobile county. Your orator states that Wm. Kitchen was the brother-in-law of the said Joshua Kennedy, and the son of Samuel Kitchen; that at this time he had no conveyance from his father, Samuel Kitchen, it being the policy of the said Joshua Kennedy to keep these transactions separate; that the said Wm. Kitchen, at the date of these conveyances, was a very young man, living with said Joshua, and, as your orator believes, was acting for him.

Your orator states that the said Joshua made representations to your orator and his brother, that their claim was of no value. That but for the respect he had for his father, he would not give a cent for it. That all he would pay would be the costs and expenses of a suit, and various other depreciating remarks and doubtful representations, which, coming from a man of vast experience in titles to real estate, of enormous wealth, of influence which attaches to wealth, no matter how accumulated, could not but make a deep impression upon the minds of your orator and his brother, and induced the execution of said deed. This would be aggravated by the condition of complexity and embarrassment into which the devices of the said Joshua had involved the title. The claim of your orator's father had been abandoned, and there was no mode of reviving it, except by petition to Congress. The claim of Alexander Baudain, though it had been confirmed, yet the evidences of it were only to be found at a distance, and that claim the said Joshua Kennedy had depreciated and displaced, and the records of the county disclosed that an older conveyance from William E. Kennedy to Samuel Kitchen, clothed with all the forms of law, had been made, and James Innerarity, the administrator of the said Joseph Collins, held the evidence of right, and set up claims of his own. The facts that have since been developed, that Joshua Kennedy was the promoter and mover of all these complex and fraudulent arrangements, had not appeared. A vague suspicion at most could arise. It wanted the facts that William Kitchen should make his conveyances to Joshua for the amount of the purchase money paid to Innerarity. The fact of the transfer by Samuel Kitchen for the nominal considerations to the said William, or said Joshua; the fact of the overlevying of the Baudain by the Price claim, and the disclosures made by Samuel Kitchen in his deposition in 1840, fully to elucidate the complicated and chequered web of fraud so curiously, systematically, and perseveringly woven by the said Joshua.

Your orator further sheweth to your honor, that shortly after these transactions your orator left the State of Alabama with his brother; that they have neither resided in Alabama since their departure, and that the facts aforesaid have not therefore come to their knowledge. That the absolute deed, received in 1824 by the said Joshua Kennedy from William E. Kennedy, passed in his life for an unconditional deed, and was so claimed by him on his death bed. That it has been established by the decree of the court of chancery that it was given upon a trust to preserve the property therein mentioned for the children of

William E. Kennedy. That the investigations in the said case led to the inquiries into the life and conduct of the said Joshua; and, among other things, facts were exposed in regard to this property, which afford a clue to the whole labyrinth in which the said Joshua has so artfully involved the title to it. Your orator charges that the control of this property has been for the said Joshua Kennedy, and that the employment of the said William Kitchen and Samuel Kitchen has been to perplex and confuse the truth. That, in the execution of the deeds to William Kitchen, both the said George Collins and Sidney Collins were imposed upon by the declarations, assurances, and representations of the said Joshua, in regard to the title and the value of their rights, rights which had only been impaired in value by the contrivances of the said Joshua himself. Your orator states that he is informed by his mother that neither the said George nor himself were of age at the date of their respective deeds, and though no record of his age is within his reach, he believes this to be true.

Your orator further states, that the said Joshua in his life received very large profits from this land, and that Hallett and Walker, and the heirs of said Joshua, have done so since; that they claim, and the heirs of William E. Kennedy conceded, their exclusive right to the said land in the division between them, and that the latter have none in the said property. That all the acts of the said parties are and ought to be visited on the said James Campbell and the President and Directors aforesaid, for they have aided and abetted them, taking conveyances from them, and controlling the property under them; and should it appear that the said Samuel Kitchen and William Kitchen, and James Innerarity, have acted in entire good faith, and without any relation to Joshua Kennedy; nevertheless, the said Joshua should not be allowed to carry off the prize.

For your orator charges, that the said property was worth twenty thousand dollars and upwards in 1820, seventy-five thousand dollars in 1830, and is probably worth two hundred thousand dollars at this time. The result would be that for nominal sums, advanced by Joshua Kennedy, he would realize this value by the slow, consistent, and laborious prosecution of a scheme of fraud, all of which would tend to the wrong of your orator, and be contrary to equity and good conscience. In consideration of which, your orator prays that writs of subpœna may issue to William R. Hallett and Robert L. Walker, John H. Hastie and wife, Augustus R. Meslier and wife, Clarissa Kennedy, Augusta Kennedy, and Joshua Kennedy, James Innerarity, Samuel Kitchen, William Kitchen, the President and Directors of the Branch of the Bank of the State of Alabama at Mobile, citizens of the State of Alabama.

1. And that they may answer this bill, and discover in their answers the original documents herein referred to; and especially that they may set forth whether they, or either of them, have the original articles of agreement between William E. Kennedy, of the 21st November, 1806, referred to in the said deed to James Innerarity, and when and where they last saw it, and whether this is a true copy.

2. That they may set forth the original deed from William E. Kennedy to James Innerarity, hereto attached.

3. That they may set forth the deed from William E. Kennedy to Samuel Kitchen, and all the facts connected with its execution, and by whom it was written.

4. That they may set forth the deeds from James Innerarity, George Collins, and Sidney Collins, to William Kitchen; state by whom they were written, and who advanced the consideration, and to whom paid.

5. That they may discover the conveyances to Joshua Kennedy, and what sums of money was paid by him for them.

6. That they may set forth any papers connected with the Price and Baudain claims, and whether the latter is not included in the former; and that the original papers may be produced to Baudain, and from Baudain to Wm. E. Kennedy; and, also, that the papers under which the Price claim may be held, be produced.

Your orator prays that the said defendants be decreed to reconvey to your orator the said parcel of land, and account for the rents and profits to your orator; and that they surrender the possession, so that your orator may acquire all he has lost; and that such other and further relief be granted as is consistent with equity and good conscience.

CAMPBELL & CHANDLER, *for Pl'ff.*

Exhibit A.

To the honorable county court of Jackson county, met according to law, 23d of May, 1813. Present, Thomas Bilbo, chief justice; Benjamin Youngblood, and Robert Williamson. Court adjourned until to-morrow, at nine o'clock.

The court met according to adjournment. Motion by Edwin Lewis to prove the will of Joseph Collins, (deceased,) and that letters testamentary be granted Benjamin Lanier, in right of Elizabeth, his wife, one of the executors appointed in said will; on which the will was proved to the court, and proven by the oath of E. Lewis, one of the subscribing witnesses, and ordered to be recorded; and that letters testamentary be granted according to motion; and that George Farragut, James Ware, and John B. Budreaux be appointed appraisers of the personal estate of said (deceased), and return the same in the same in three months to the chief justice of the county court. Benjamin Lanier appointed in open court, and took the oath of executor to the will of Joseph Collins, deceased.

(Signed,) WILLIAM HOWELL, *Cl'k.*

WEST FLORIDA, *Pascagoula:*

In the name of God, amen. I, Joseph Collins, of this place, being weak in body, though sound mind and memory, do ordain, constitute, and appoint this my last will and testament, revoking all other wills heretofore made by me. First, it is my will and desire that all my just debts shall be paid, after which I will and bequeath unto my three sons, George Emily, Sidney Eugine, and Joseph Collins, all being the chil-

dren of Elizabeth Wilson, all the residue and remainder of my estate, both real and personal, of whatsoever nature, in equal shares, which may remain after the payment of my just debts, to them and their heirs forever. And, for the purpose of carrying this my last will and testament into execution, I do ordain, constitute, and appoint Elizabeth Wilson, William Wilson, of this place, and Nicholas Cook, of Mobile, my executors, any two of whom may do any act, as executors, to bind the whole; *of* and in case one or more of them should die, then the vacancy occasioned by such shall be filled, [by] the nomination and appointment of the parish judge, or such other officer as may have jurisdiction of probates.

In testimony whereof I have hereunto affixed my name and seal this fourteenth day of June, eighteen hundred and eleven.

JOSEPH COLLINS.

In presence of—
E. LEWIS,
BENJAMIN GOODIN, SEN'R,
her
MARGARET ✕ FAYER,
mark.
his
JOHN B. ✕ BUDREAUX,
mark.

Ordinair.

Recorded August 28th, 1813.

WILLIAM HOWELL.

Inventory of the personal estate and appraisement of Joseph Collins, (dec'd,) of Pascagoula.

1 set of surveying instruments, containing a compass, chain, and *airle* staff, painting instruments, small can of pencils, paints, and brushes for painting, and estimated together, $50 00; 1 level $2 00; 1 spyglass $25; 1 sword and belt $20 00; 1 dressing case, 2 razors, and 1 bone, $1 50; 1 Gibson's Surveying $1 25; 1 Parker's Evidence, Graden's Digest, Morris' Navigation, Blunt's New Practical Navigation, Love's Survey, Barrett's Dictionary, Miller's Guide, Treatise on Artillery, Waxton's Catalogue, $8 00; 1 book maps, estimated together, $1 00; 1 very old watch, out of repair, $2 00; 1 Trunk—$91 00.

Recorded 28th August, 1813.

WILLIAM HOWELL, *Cl'k.*

MISSISSIPPI TERRITORY, *Jackson county:*

We, James Ware, Jean B. Budro, and George Farragut, having been sworn agreeable to law to appraise the personal estate of Joseph Collins, (deceased) have appraised the same agreeable to the above estimate and inventory.

Given under [our] hands and seals this fourth October, 1813.

JAMES WARE, [SEAL.]
GEORGE FARRAGUT, [SEAL.]
JOHN B. BUDRO, [SEAL.]

Recorded 4th October, 1813.

WILLIAM HOWELL, *Cl'k.*

THE STATE OF MISSISSIPPI, *Jackson county:*

I, Samuel Davis, clerk of the probate courts in and for the aforesaid county of Jackson, do certify the foregoing to be a true copy of the last will of Joseph Collins, (dec'd,) and of the order of county court appointing appraisers and return of the same.

In witness whereof, I have hereunto set my hand, and affixed the seal of office, this third day of August, A. D. 1839.

[L. S.] SAMUEL DAVIS, *Cl'k, P. C. M.*

Exhibit No. 1.

The Commandant, Osorno, to Joseph Collins.

SENOR COMMANDANT:

Joseph Collins, captain of the Fish river dragoons, in the most respectful manner, represents to your honor, that there is a lot of vacant land containing thirty-two perches in front of Royal street, being bounded on the north by the lands of Panton, Leslie and Company on the south by Saint Lewis street, and on the east by the river Mobile; which said land is wet and marshy, and for this reason no one has heretofore petitioned for a grant for the same. Your petitioner therefore humbly prays that your honor may be pleased to grant him the said parcel of land, as the same is designated and represented in the plan hereto annexed, dated Mobile, the third day of January, in the year of our Lord one thousand eight hundred and three.

(Signed,) JOSEPH COLLINS.

I, Don Joaquim Osorno, captain of the regiment of Louisiana infantry, civil and military commandant of the town of Mobile and its jurisdiction, and sub-delegate of the intendant general of those provinces, do, by these presents, make known that, since the death of his excellency, Manuel Serrano, the assessor of this intendancy, it has been ordered that all matters relating to petitions for grants of land shall be suspended.

Now, therefore, I, by these presents, do grant permission to the above named Joseph Collins, captain of the dragoons attached to the militia of Fish river, and special surveyor of this district, to take possession of the lot and parcel of land, which is designated in the plan or plat of the same hereto annexed, without let, impediment, or molestation from any one; provided, always, that the said land is vacant and unappropriated, and that no one shall thereby be injured. But upon condition that as soon as an assessor shall have arrived in these provinces, the petitioner, in the manner prescribed in such cases, shall present the necessary documents, to be transmitted to his excellency, the intendant general of these provinces, in order that he may be furnished with the necessary titles to the above described tract of land in due form.

Given at Mobile, this twenty-sixth day of April, in the year of our Lord one thousand eight hundred and three.

(Signed) JOAQUIM DE OSORNO.

[For plat see original.]

Exhibit No. 2.

Whereas, by virtue of and under a title from the Spanish governor, Gayoso, to Alexander Baudain, of *of* the former district and present county of Mobile, bearing date the tenth day of July, one thousand seven hundred and ninety-eight, and by a sale from the said Alexander Baudine to me, I claim a certain lot or parcel of land within the limits of the town of Mobile, containing about seven acres, more or less, bounded north by the plantation of John Forbes & Co., called Poplar Grove; west by Royal street, and having about thirty-two perches front on the line thereof; south by St. Louis street, being street that runs west, southwardly from the river, between the aforesaid ground and a lot belonging to James Innerarity; and thence by the south side of the lot and house formerly belonging to the Menlonis or Baudain family, now to Lewis Judson, esq., and lots now or lately belonging to the Carr family; and thence onwards by the north side of the late Thomas Price's house, and between it and a lot belonging to , and so forth to the woods; and eastwardly by the river Mobile. And whereas, by written articles of agreement, dated the twenty first of November, eighteen hundred and six, hereunto annexed, entered into by me with the late Joseph E. Collins, then of Mobile, deputy surveyor general of West Florida, who had also a title, permit, or order of survey, for the same grounds above described, it was stipulated to divide the same between us; the upper or northern half to belong to me, and the southern to the said Collins; and, moreover, on my part, that I should fence and ditch, and improve the said ground, to prevent its forfeiture; and having made and given evidence of improvements thereon before the land commissioner, east of Pearl river, under my particular claim aforesaid, no evidence having been given by the person who laid in the claim of the said Joseph E. Collins. And whereas James Innerarity, of Mobile, hath been appointed by the orphan's court of Mobile county to be administrator of the estate of the said Joseph E. Collins:

Now, be it known that, from regard to the memory of the said Joseph E. Collins, and for the further consideration of one dollar, to me in hand paid by the said James Innerarity, administrator of said estate, the receipt whereof I hereby acknowledge, I, the said William E. Kennedy, have bargained, sold, remised, and quit claimed, and by these presents do bargain, sell, remise, and quit claim, unto the said

James Innerarity, administrator of said estate, and to all and every and each person who shall purchase the said described premises, or any part thereof, at an administrator's sale of real estate, made in pursuance of the laws thereto applicable, and the legal order of the court having the power to make such order, and all, and every, and each of their heirs, all right and title that I now have, or may hereafter have, to the lower or southern half of the said described ground, to be surveyed and laid off in the manner and form described in the articles of agreement before mentioned and annexed; which agreement I hereby confirm and ratify; together with all and singular the hereditaments and appurtenances thereto belonging, or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and also all the estate, right, title, interest, and claim, or demand whatsoever, of me, the said William E. Kennedy, either in law or in equity, in and to the above bargained southern half of the said ground, and every part and parcel thereof; I do furthermore covenant and bind myself, and my heirs, in the event of my title or right to the said land as aforesaid being confirmed, or a certificate of confirmation, or a patent issuing for the same from the United States Government, that then such further deed or conveyance in the land shall be executed by me or my heirs to the said James Innerarity, administrator, or to his legal assigns, or to the heirs of the said Collins, as the case of right may be, as he, they, or any of them, shall or may demand in and for the premises.

In testimony whereof I have hereunto set my hand and seal, at Mobile, this second day of March, one thousand eight hundred and twenty.

WILLIAM E. KENNEDY. [SEAL.]

Signed, sealed, and delivered in presence of—
JOSHUA KENNEDY,
DAVID BURT,
HENRY V. CHAMBERLAIN.

STATE OF ALABAMA, *Mobile county:*

Personally appeared before me, Hugh H. Rolston, clerk of the inferior *clerk*, in and for said county, the above named William E. Kennedy, who acknowledged that he signed, sealed, and delivered the foregoing deed, on the day and year therein mentioned, to the aforesaid James Innerarity, and also the annexed articles.

Given under my hand and seal, this second day of March, A. D. 1820.

HUGH H. ROLSTON, *Clerk.* [SEAL.]

Articles to the foregoing deed. *Mobile 25th November*, 1806.

Articles of agreement indented, made, and concluded, by and between Captain Joseph Collins, of West Florida, on the one part, and William E. Kennedy, of said province, of the other part, witnesseth: That the said Joseph Collins, for the condition hereafter mentioned, hath agreed to give and convey all his right and title to the north half of a lot, situated between Royal street and Mobile river; bounded on the north by the plantation of Panton, Leslie & Co., on the west by

Royal street, on the south by St. Louis street, and on the east by the river Mobile; it is to be understood that each party's half of said lots must front on Royal street, and that the lot is to be divided into two equal parts; from which street a line is to be drawn to the Mobile river, so as to divide the front on said river equally between the parties; and the northern, half bounding on Panton, Leslie & Co., is to belong to said William E. Kennedy, his heirs, administrators, or assigns. The condition of this obligation is such, that the above named William E. Kennedy, on his part, is to improve said lot, so that by fencing and ditching that said lot may not be forfeited, and that he will begin to improve said lots immediately.

WILLIAM E. E. KENNEDY. [SEAL.]

Signed, sealed, in the presence of us, witnesses—
BENJAMIN DUBROCA,
ZENO ORSO.

Exhibit, No. 3.

To all to whom these presents shall come, I, James Innerarity, of the city and county of Mobile, and State of Alabama, send greeting:

Whereas by a decree of the circuit court of Mobile county, exercising chancery jurisdiction, held on the fourth Monday of *the fourth Monday of* March, in the year of our Lord one thousand eight hundred and thirty-two, it was ordered, adjudged, and decreed, on the prayer of the bill of complaint of William Kitchen, filed and prosecuted against me, my answer thereto, and of the proof and exhibits, as well on the part of the complainants as of himself, that I should convey to the said William Kitchen the land described in the said complainant's bill of complaint, upon the said complainant paying to me the debts and interest set forth in my answer to the said complainant's bill of complaint; which said debts, and the interest thereon accruing up to the date hereof, amount to the sum of two thousand two hundred and thirty-three dollars and twenty-two cents.

Now, therefore, know ye, that in obedience to the said decree, and in consideration of the aforesaid sum of two thousand two hundred and thirty-three dollars and twenty-two cents, to me in hand paid by the said William Kitchen, the receipt whereof I do hereby acknowledge, I, the said James Innerarity, have conveyed and quit-claimed, and by these presents do convey, release, and quit-claim, unto the said William Kitchen, his heirs and assigns, forever, the land aforesaid, and all the right, title, interest, estate, claim, and demand, both at law and in equity, of, in, and to the said land in the said bill of complaint mentioned, in as full and ample a manner as the same was conveyed to me, by the late William E. Kennedy, by deed bearing date on the second day of March, in the year of our Lord one thousand eight hundred and twenty, and recorded in the clerk's office of the county court of Mobile county, in book C, pages 217, 218, 219, and 220; which said land is described in the said deed, and in the said complainant's bill of complaint, as follows, to wit:

The lower or southern half of a certain lot or parcel of land, situate within the limits of the city of Mobile, containing about seven acres, more or less; bounded north by the plantation late of John Forbes & Co., called Poplar Grove; west by Royal street, and having about thirty-two perches front on the line whereof; south by St. Louis street; and on the east by the Mobile river; together with all and singular the hereditaments and appurtenances thereunto belonging, or in any wise appertaining.

To have and to hold the above described land and premises, to the said William Kitchen, his heirs and assigns, forever; so that neither I, the said James Innerarity, nor any person claimant under me, shall at any time hereafter, by any way or means, have, claim, or demand, any right, title, or interest to the aforesaid premises, or to any part or parcel thereof, forever.

In testimony whereof I, the said James Innerarity, have hereunto, in obedience to the said decree, set my hand and affixed my seal, at the city of Mobile, this 28th day of September, in the year of our Lord 1832.

JAMES INNERARITY. [L. S]

Signed, sealed, and delivered, in presence of—
SAMUEL ARN,
WILLIAM M. GARROW.

THE STATE OF ALABAMA, *Mobile county:*

Personally appeared before me, Henry Lewis, clerk of the county court of said county, the within named William M. Garrow, one of the subscribing witnesses to the within deed copy, being first duly sworn, deposeth and saith, that he saw the within named James Innerarity, whose name is subscribed thereto, sign, seal, and deliver the same to the said William Kitchen; that he, this deponent, subscribed his name as a witness thereto, in the presence of the said James Innerarity; that he saw the other subscribing witness, Samuel Arn, sign the same in the presence of the said James Innerarity, and in the presence of each other, on the day and year therein named.

Given under my hand and seal, this thirty-first day of October, 1842.

H. LEWIS. [SEAL.]

Exhibit No. 4.

The original deed, of which this is a copy, was produced by the executors of Joshua Kennedy, on notice by the plaintiff, and the body of the deed proven to be the handwriting of Joshua Kennedy.

STATE OF ALABAMA, *Mobile county, ss:*

Know all men by these presents, that I, William E. Kennedy, in consideration of the sum of seven hundred dollars, to me in hand paid by Samuel Kitchen, the receipt of which I do hereby acknowledge, have bargained, sold, and confirmed, and I do by these presents bar-

gain, sell, deed, and confirm, to the said Samuel Kitchen, his heirs and assigns, forever, the south half of all that lot, piece, or parcel of ground, situated on the northeast corner of Mobile, originally granted to Alexander Baudain, and purchased by me of the said Baudain, and having a front on the east side of Royal street, and extending to the river Mobile; bounded east by the river Mobile, south by St. John street, west by Royal street, and north by Forbes & Co's land, having such shape, mark, form, and quantity as will appear by reference to the grant for the same, recorded in the land office, in book "C," from page 54 to 56, and as the same shall or may be confirmed to me by the United States.

To have and to hold the said piece or parcel of land, with all and singular the rights, titles, numbers, and appurtenances thereunto belonging or in any wise appertaining, unto him, the said Samuel Kitchen, his heirs and assigns, forever.

In testimony of which I have hereunto set my hand and seal, this twenty-eighth day of January, in the year one thousand eight hundred and twenty.

WILLIAM E. KENNEDY. [L. S.]

In presence of—
DIEGO MCBOY,
JOSHUA KENNEDY.

STATE OF ALABAMA, *Mobile county*.

Be it remembered, that on the twenty-eighth day of March, in the year of our Lord eighteen hundred and twenty, personally appeared before me, Henry V. Chamberlain, esq., one of the justices of the quorum for said county, William E. Kennedy, whose name is subscribed to the within instrument of writing, who acknowledged that he signed, sealed, and delivered the same for the use and purposes therein expressed.

In witness whereof I have hereunto set my hand and seal, at Mobile aforesaid, the day and year first above written.

HENRY V. CHAMBERLAIN, [L. S.]
Just. quorum.

STATE OF ALABAMA, *Mobile county*.

Know all men by these presents, that I, George E. Collins, of the aforesaid State and county, and a son, heir, and legatee of the said Joseph E. Collins, formerly deputy surveyor under the Spanish Government, in consideration of the sum of one thousand dollars, to me in hand paid by William Kitchen, of the aforesaid State and county, the receipt whereof I do hereby acknowledge, have bargained, sold, and quit claimed, and by these presents do bargain, sell, and quit claim, unto the said William Kitchen, and to his heirs and assigns forever, all my right, title, interest, estate, claim, and demand, both at law and in equity, as well in possession as in expectancy, of, in, and to all that certain lot, piece, or parcel of land, situate within the incorporate limits of Mobile, and originally granted by Manuel Gayoso de Lemos, governor of Louisiana, (by decree bearing date New Orleans, 10th July, 1798,)

to Alexander Baudain, and by him conveyed to William E. Kennedy by a deed of conveyance dated April 22d, 1814, and recorded in B, No. 1, pages 61, 62, to wit, lying and being within the following boundaries: north of St. Louis street, south of John Forbes & Co., east of Royal street, and on [the] east bounded by the river Mobile; which is the same lands described in a deed of conveyance from William E. Kennedy to James Innerarity, dated the 2d day of March, 1820, with all and singular the hereditaments and appurtenances thereunto belonging.

In witness whereof I have hereunto set my hand and seal, this second day of September, in the year eighteen hundred and twenty-nine.

GEO. E. COLLINS. [L. S.]

In presence of us—
E. LEWIS,
GEO. LAFLER.

Note. It is expressly understood, that the said George E. Collins has not, before the signing, sealing, and delivery of the above deed, made any sale and conveyance for the above land, or any part thereof, but that he warrants and defends against himself, his heirs, or assigns only; but does not warrant against any other claim or claims.

GEO. E. COLLINS. [L. S.]

In presence of us—
E. LEWIS,
GEO. LAFLER.

STATE OF ALABAMA, *Mobile county, ss:*

Personally appeared before me, William Hale, judge of the county court of Mobile county, the within named Edwin Lewis, one of the subscribing witnesses to the foregoing deed, who, being first duly sworn, deposeth and saith, that he saw the above named George E. Collins, whose name is subscribed thereto, sign, seal, and deliver the same to the said William Kitchen, in the presence of the said Edwin Lewis, and that he saw the other subscribing witness, George Lafler, sign the same in the presence of each other, on the day and year therein mentioned.

E. LEWIS.

Given under my hand and seal, this eleventh day of September, 1829, and sworn at the same time before me.

WILLIAM HALE. [L. S.]

Exhibit No. 5.

To all to whom these presents shall come, greeting:

Know ye, that I, Sidney E. Collins, of the city and county of Mobile, in the State of Alabama, for and in consideration of the sum of one thousand dollars, lawful money of the United States of America, to me in hand paid by William Kitchen, of the county of Baldwin, in the State aforesaid, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have remised, released, and forever quit claimed, and by these presents do remise, re-

lease, and forever quit claim, unto the said William Kitchen, in his full and actual possession now being, and to his heirs and assigns forever, all the estate, right, title, interest, use, trust, property, claim, of, in, to, or out of all and singular a certain piece or parcel of land, situate, lying, and being in the city of Mobile, and State of Alabama aforesaid, and fronting the Mobile river; bounded as follows, to wit, on the east by the river Mobile, on the north by lands claimed by John Forbes & Co., on the west by Royal street, and on the south by Saint Louis street, in the city of Mobile; also all my right, title, and interest, both at law and in equity, as well in possession as in expectancy, of, in, and to the premises above described, and to every part and parcel thereof; to have and to hold the said released premises unto the said William Kitchen and to his heirs and assigns, to his own proper use, benefit, and behoof forever; so that neither I, the said Sidney E. Collins, my heirs or assigns, nor any other person or persons in trust for me, or in my name or names, or in the name, right, or stead of any of them, shall or will, can or may, by any ways or means whatsoever, hereafter have, claim, challenge, or demand any right, title, interest, or estate, of, in, to, or out of the said premises above described and hereby released; but that I, the said Sidney E. Collins, my heirs and assigns, each and every of them, from all estate, right, title, interest, property, claim, and demand, whatsoever, of, in, to, or out of the said premises, or any part thereof, are, is, and shall be by these presents forever excluded and debarred.

In witness whereof the said Sidney E. Collins hath hereunto set his hand and seal, this eighteenth day of November, in the year of our Lord one thousand eight hundred and thirty.

SIDNEY E. COLLINS. [L. S.]

Sealed and delivered in the presence of—the words "the said" erased before signing—

A. McManus,
John A. Stuart.

The State of Alabama, *Mobile county.*

Personally appeared before me, Henry Lewis, clerk of the county court of said county, the within named Sidney E. Collins, and acknowledged that *they* signed, sealed, and delivered the foregoing deed, on the day and year therein named, to the said William Kitchen.

Given under my hand and seal, this 18th day of November, 1830.

HENRY LEWIS. [L. S.]

Exhibit No. 6.

To all people to whom these presents shall come, greeting:

Know ye, that I, William Kitchen, of the county of Baldwin, in the State of Alabama, at present in the city and county of Mobile, in said State, for and in consideration of the sum of twenty-two hundred and thirty-three 22-100 dollars, of lawful money of the United States of America, to me in hand paid by Joshua Kennedy, of the city, county, and State last aforesaid, at or before the sealing and delivery of these

presents, the receipt whereof is hereby acknowledged, have remised, released, and forever quit-claimed, and by these presents do remise, release, and forever quit-claim, unto the said Joshua Kennedy, in his full and actual possession now being, and to his heirs and assigns forever, all the estate, right, title, interest, use, trust, property, claim, and demand whatsoever, at law as in equity, in possession as well as in expectancy, of, in, to, or out of all and singular the lower or southern half of a certain lot of land, situate within the limits of the said city of Mobile, containing about seven acres, more or less, bounded on the north by the plantation (late) of John Forbes & Co., called "Poplar Grove;" on the west by Royal street, and having about thirty-two perches front on the line thereof; on the south by Saint Lewis street, and on the east by the Mobile river; together with all and singular the hereditaments and appurtenances thereunto belonging or in any wise appertaining.

To have and to hold the said released premises, unto the said Joshua Kennedy, and to his heirs and assigns, to their own proper use, benefit, and behoof, forever. So that neither the said William Kitchen, his heirs or assigns, nor any other person or persons in trust for him or in their name, or in the name, right, or stead of any of them, shall or will, can or may, by any ways or means whatever, hereafter have, claim, challenge, or demand any right, title, interest, or estate of, in, to, or out of the said premises above described and hereby released. But that he, the said William Kitchen, his heirs and assigns, each and every one of them, from all estate, right, title, interest, property, claim, and demand whatsoever, of, in, to, or out of the said premises, or any part thereof, are, is, and shall be by these presents forever excluded and debarred.

In witness whereof the said William Kitchen hath hereunto set his hand and seal, this seventeenth day of October, in the year of our Lord one thousand eight hundred and thirty-two.

WILLIAM KITCHEN. [SEAL.]

Signed, sealed, and delivered, in the presence of—
A. J. JUDE,
JOHN A. STUART.

STATE OF ALABAMA, *Mobile county, ss:*

Be it remembered that the within named William Kitchen, personally appeared before John A. Stuart, a notary public for said county, duly commissioned and sworn, and acknowledged that he signed, sealed, and delivered the within deed of quit-claim to Joshua Kennedy, on the day and year, and for the uses and purposes therein mentioned.

In witness whereof I have hereto set my hand and seal notarial, the seventeenth day of October, in the year of our Lord one thousand eight hundred and thirty-two.

JOHN A. STUART, *Notary Public.*

Exhibit No. 7.

To all people to whom these presents shall come, greeting:

Know ye, that I, Samuel Kitchen, of Baldwin county, at present in

Mobile county, in the State of Alabama, in consideration for the love and affection I have for William Kitchen, of the city of Mobile, and also for and in consideration of the sum of two hundred and fifty dollars, lawful money of the United States of America, to me in hand paid by the said William Kitchen at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have remised, released, and forever quit-claimed, and by these presents do remise, release, and forever quit-claim, unto the said William Kitchen, in his full and actual possession now being, and to his heirs and assigns forever, all the estate, right, title, interest, use, trust, property, claim, and demand whatsoever, at law as well as in equity, in possession as well as in expectancy, of, in, to, or out of all and singular that certain piece, parcel, or lot of land and premises, situate, lying, and being in the city of Mobile, heretofore conveyed to me by deed from William E. Kennedy, bearing date the 28th day of January, 1820; which land is described in the said deed, as follows, to wit:

The south half of all that lot, piece, or parcel of ground, situated in the northeast corner of Mobile, and originally granted to Alexander Baudain, and purchased by me of said Baudain, having a front on the east side of Royal street, and extending to the river Mobile; bounded east by the river Mobile, south by St. John street, and north by Forbes & Co's land, and having such shape, marks, and form, and quantity, as will appear by reference to the grant for the same, recorded in the land office in book "C," page 54 to 56, and as the same shall or may be confirmed to me by the United States.

To have and to hold the said released premises, unto the said William Kitchen, his heirs and assigns, to their own proper use, benefit, and behoof, forever; so that neither the said Samuel Kitchen, the said grantor, his heirs or assigns, nor any other person or persons in trust for him, or in his name or names, or in the name, right, or stead of any of them, shall or will, can or may, by any ways or means whatever, hereafter have or claim, challenge or demand, any right, title, interest, or estate, of, in, to, or out of the said premises above described and hereby released. But that I, the said Samuel Kitchen, the grantor aforesaid, my heirs and assigns, each and every of them, from all estate, right, title, interest, property, claim, and demand whatsoever, of, in, to, or out of the said premises, or any part thereof, are, is, and shall be by these presents forever excluded and debarred.

In witness whereof the said Samuel Kitchen hath hereunto set his hand and seal, this eighth day of January, in the year of our Lord one thousand eight hundred and thirty-four.

SAMUEL KITCHEN. [SEAL.]

Signed, sealed, and delivered, in presence of—
D. STEPHENSON,
GEO. J. S. WALKER.

THE STATE OF ALABAMA, *Mobile county.*

Mobile county. Be it remembered, that the within named Samuel

Kitchen appeared personally before John A. Steuart, a notary public for said county, duly commissioned, qualified, and sworn, and acknowledged that he signed, sealed, and delivered the within deed of quit claim to William Kitchen, on the day and year, and for the uses and purposes therein mentioned.

In testimony whereof I have hereunto set my hand, and affixed my notarial seal, the eighth day of January, in the year of our Lord one thousand eight hundred and thirty-four.

JNO. A. STUART.

Exhibit—transcripts of the Alex. Baudain claim.

To the register of the land office and receiver of public moneys, acting as commissioners of land claims, under the act of Congress, entitled "an act for adjusting claims to land and establishing land offices in the district east of the island of Orleans," passed the 3d March, 1819. Gentlemen Please take notice, that I hereby revive the following claim and offer additional evidence in support thereof, viz: 3d, a claim for a lot of ground in the town of Mobile, fronting on Royal street, and extending to [the] river, whereof the title is recorded in book C, pages 55 and 56.

WILLIAM E. KENNEDY.

Evidence.

Baptiste Trenier, being duly sworn, deposeth, that about three years subsequent to the running of the 31st of N. latitude by Elliott, say about the year 1801, deponent assisted in making a levee on a piece of land claimed by Dr. Kennedy, lying near the east end of Mobile, on Mobile river; which levee was made by deponent and others for their own convenience. Further deponent saith not.

BAPTISTE TRENIER.

Sworn to before me, 24th March, 1830.

W. BARTON, *Register.*

Diego McVoy, being duly sworn, deposeth, that the piece of land claimed by Dr. Kennedy, bounded on the upper side by Brady's, now Forbes & Co's, land, on the lower side by the town of Mobile, and on the east side by Mobile river, was inhabited by a man called Ribos prior to [the] year 1808; but the house that was occupied by Ribos is not now standing, though the remains of the ditches made by Dr. Kennedy are still to be seen. The land was considered, ever since deponent knew it, to belong to Dr. Kennedy.

DIEGO McVOY.

Sworn to before me, 24th March, 1820.

W. BARTON, *Register.*

Feldon Nicholas, being duly sworn, deposeth, that in the year 1801 he saw a levee and drain on the side fronting the river on the lot claimed as above stated by Dr. William E. Kennedy, and formerly the property of Alexander Baudain; he heard the said Baudain say that he had

made the said levee with [the] assistance of Mr. Baptiste Trenier. Deponent further declares that, in the year 1807 or '8, he saw a house standing on the said land unoccupied; in 1820 he saw a man occupied with Dr. Kennedy's hands in making ditches on the land. The house was destroyed by the militiamen during the late war. The land was surrounded by a ditch and the river, and a centre ditch ran through the same to the river.

T. NICHOLAS.

Sworn to before me, 24th March, 1820.

W. BARTON, *Register*.

Before me, Henry V. Chamberlain, chief justice of the inferior court of Mobile county, personally appeared James Innerarity, who being duly sworn deposeth and saith, that he knew the parcel of land claimed by William E. Kennedy, bounded on the north by John Forbes & Co's plantation, called Poplar Grove, on the east by Mobile river, and on the south by St. Louis street, which separates it from the lot belonging to the said Innerarity, and on the west by Royal street. That the said ground was claimed also by Joseph E. Collins. That William E. Kennedy ditched it many years ago, perhaps as far back as 1802, '3, or '4; but this is not distinctly recollected. That he had also constructed a small cabin on it, which has fallen or been destroyed; the remains of the ditches are very visible at this time, and have been recently dug afresh. That these works were done by Kennedy in consequence of an agreement with Collins, as this deponent believes; and further he saith not.

JAMES INNERARITY.

Sworn to and subscribed, this 8th day of May, 1820, before me.

HENRY V. CHAMBERLAIN, *Jus. peace*.

STATE OF ALABAMA, *Mobile county:*

Personally appeared before me, Henry V. Chamberlain, esq., chief justice of [the] county court, Peter H. Hobart, who being duly sworn deposeth and saith, that in the year of our Lord one thousand eight hundred and eight, Dr. William E Kennedy had a cabin and occupied and improved a lot in the town of Mobile, immediately opposite the house of John Forbes & Co., formerly occupied by James Bready, and between said house and Mobile river, on the east side of Royal street; and, further, that the said William E. Kennedy had, to my knowledge, claimed said lot at various times since.

PETER H. HOBART.

Sworn to and subscribed, this 15th day of June, 1820, before me.

HENRY V. CHAMBERLAIN,
Ch. Jus. C. Court.

Report No. 7. Register of evidence collected in relation to lots in the town of Mobile. Number 16; by whom claimed, William E. Kennedy; original claimant, Alexander Baudain; nature of claim and from what authority derived, Spa permit; date of claim, 10 July, 1798; quan-

tity claimed in feet, 5 perches; where situated, northeast town of Mobile; by whom issued, Gayoso; cultivation and inhabitation, ditched in 1811, a house built in 1808; land office, Jackson court-house, July 11th, 1820; W. Barton, register; W. Barnett, receiver; attest, John Elliott, clerk.

No. 5. Transcript from the register of certificates granted for claims to lots in the town of Mobile, in the district of Jackson court-house, Mississippi, contained in report No. 7, of the register and receiver on the town lots, and confirmed by virtue of the act of Congress passed the 8th May, 1822, entitled "an act confirming claims to lots in the town of Mobile, &c.;" number of certificate, 7; number of claim, 16; number of report, 7; present claimant, William E. Kennedy; original claimant, Alexander Baudain; nature of claim, Spanish permit; quantity confirmed, ; where situated, Royal street, town of Mobile; register's department, land office, Jackson court-house, Mississippi, January 1, 1823; W. Barton, register.

Report No. 7. Register and receiver; register of certificates issued for claims to lots in the town of Mobile, contained in report No. 7 of the register and receiver, and confirmed by the act of Congress, approved the 8th May, 1822, entitled an act confirming claims to lots in the town of Mobile, &c.; date of certificate, 17th June, 1823; number of certificate, 7; number of claim, 16; number of report, 7; present claimant, William E. Kennedy; original claimant, Alexander Baudain; nature of claim, and from what authority derived, Spanish permit; date of claim, 10th July, 1798; quantity confirmed ; where situated, town of Mobile; by whom granted, Manuel Gayoso de Lemos; land office, Jackson court-house, Mississippi, 30th September, 1823; William Barton, register; G. B. Dameron, receiver.

Register of locations, directed by the register and receiver to be made of confirmed private land claims in the district of Jackson court-house, under the authority of the 4th section of an act of Congress, passed on the 8th day of May, 1822, entitled an act supplementary to the several acts for adjusting the claims to land and establishing land offices in the districts east of the island of New Orleans, and of the 5th section of the act of Congress, passed the same day, entitled an act for confirming claims to lots in the town of Mobile, &c. Date of warrant, 18th June, 1823; number of warrant, 5; number of certificate, 7; number of claim, 16; number of report, 7, R. & R.; claimant, William E. Kennedy; where situated, town of Mobile; by whom located, Joshua Kennedy, legal representative; in what manner located, according to the original title recorded in the land office.

LAND OFFICE, *St. Stephen's, Ala.*,
April 10th, 1845.

I do hereby certify, that the annexed and foregoing transcript of the claim of William E. Kennedy, in the right of Alexander Baudain, revived before the register and receiver, acting as commissioners, is a correct copy from the book of record of claims laid before, and acted on by, the said register and receiver, as the same is found in this office.

Witness my hand and private seal, having no seal of office.

JAMES MAGOFFIN, [L. S.]
Register.

To William Crawford, commissioner of land claims east of Pearl river:

Please take notice, that I claim seven arpens of land, situated at the northeast corner of Mobile, bounded on the north side by John Forbes & Co's land, on the east side by the river Mobile, and on the south side by St. Louis street, formerly called St. John's street, and on the west side by Royal street, by virtue of a Spanish grant from Gayoso to Alexander Baudain, dated 10th July, 1798, and conveyed by the said Baudain to me by deed of conveyance, dated 22d April in the present year, as will more fully appear by reference to the annexed grant and conveyance.

Mobile, 12th August, 1814.

WILLIAM E. KENNEDY.

Señor Governor General:

Alexander Baudain, an inhabitant of this place, with due respect represents to your excellency, that having found a vacant tract of land, situated to the northeast of Mobile, fronting on the east side of Royal street five perches, and extending back east to the Mobile river, bounded on the north by Terry's lands, on the west by Royal street, on the south by St. John's street, and on the east by Mobile river; being desirous of establishing himself upon said land, as it suits him for his trade of ship-carpenter. Wherefore your excellency will please grant him the said lot, and to order him the necessary documents for the purpose; which is a favor he hopes to receive from your honor's equity.

Mobile, 28th June, 1798. ALEXANDER BAUDAIN.

(*Information.*)

Señor Governor General:

The petitioner is a creole of this place, and a ship-carpenter, who solicits to establish, for the purpose of working without molestation, upon the aforesaid lot, according to the information given [you] by *from* respectable inhabitants of this place, that the lot was the king's, and did not belong to any person; wherefore your excellency will make known your pleasure.

Mobile, 28th June, 1798.

MANUEL DE LANZOS.

Decree.

NEW ORLEANS, 10*th July*, 1798

The commandant of the town of Mobile will settle the person upon the lot he solicits, in the place mentioned in the preceding memorial, on being vacant, and causing no injury.

MANUEL DE LANZOS.

It is conformable to the original which exists in commandancy under my charge; and, at the request of the party interested, I give the present

before two witnesses of acceptance, for want of a notary public, and on two leaves of ordinary paper, there being no stamp in use.

Mobile, 25th Sept, 1805. *Mobile, 25th Sept.*, 1805.

FRANCIS MAXIMO. DE ST. MAXENT.

FRANCIS COMEDO,
JOHN SUIZ.

Know all men by these presents, that I, Alexander Baudain, in consideration of the sum of two hundred and fifty dollars, to me in hand paid by William E. Kennedy of Mobile, the receipt whereof I do hereby acknowledge, have bargained and forever quit claimed unto the said William E. Kennedy, his heirs and assigns forever, all that lot situated in the northeast corner of Mobile, fronting on the east side of Royal street fifty perches, and extending back east to the river Mobile, on the south side by St. John street, on the west side by Royal street, as will more fully appear by reference to the original grant to me from Governor Gayoso de Lemos, dated in New Orleans, in the year one thousand seven hundred and ninety-eight. To have and to hold the same, together with all and singular the privileges and appurtenances thereunto belonging, to him, the said William E. Kennedy, his heirs and assigns forever.

Signed, sealed, and delivered, in the town of Mobile, this 22d day of April, in the year 1814.

ALEXANDER BAUDAIN. [L. S.]

Personally appeared before me, Lewis Dolive, esq., a justice of the quorum of said county, the before mentioned Alexander Baudain, who acknowledged that he signed, sealed, and delivered the foregoing deed, on the day and year therein mentioned, to the aforesaid William E. Kennedy.

Given under my hand and seal this 22d day of April, in the year 1814.

LOUIS DOLIVE, *J. Q.*

In presence of—

JOSHUA KENNEDY.

(*Evidence.*)

John Baptiste Trenier, being sworn, saith, that the land claimed by William E. Kennedy had been improved by himself and Lewis Baudain, the brother of Alexander Baudain, former owner of the land, by making a levee from Royal street to the river through the swamp.

his
JOHN BAPTISTE ⋈ TRENIER.
mark.

Sworn and subscribed to before me—

LOUIS DOLIVE, *J. Q.*

Report No. 6—Register of claims to land in the district east of Pearl River, in Louisiana, founded on orders of survey, (Requettes,) permission to settle, or other written evidence of claim, derived from either

the French, British, or Spanish authorities, which, in the opinion of the commissioners, ought not to be confirmed.

Number 100. By whom claimed, William E. Kennedy; original claimant, Alexander Baudain; nature of claim, and from what authority, Spa. concession; date of claim, 10th July, 1798; quantity claimed, 7 arpens; where situated, near Mobile; by whom issued, Gayoso; surveyed, no survey; inhabitation and cultivation, not inh. nor cul.

WM. CRAWFORD, *Commissioner*.

Remarks on the preceding claims.

The preceding claims are forfeited, most of them under the Spanish law for the want of inhabitation and cultivation, and do not appear to be entitled to confirmation under any law of the United States. A few are derived from officers who had no right to grant, or, at most, not on so extensive a scale.

WILLIAM CRAWFORD, *Commissioner*.

LAND OFFICE, ST. STEPHEN'S, ALA.,
April 10*th*, 1845.

I do hereby certify, that the annexed and foregoing transcript of the claim of Alexander Baudain is a correct copy from the book of record of claims, laid before and acted on by the commissioner, as the same is found in this office.

Witness my hand and private seal, having no seal of office.

JAMES MAGOFFIN, *Register*. [SEAL.]

Exhibit.*—*Testimony of Samuel Kitchen, in case of heirs of Wm. E. Kennedy* vs. *heirs and representatives of Josh. Kennedy.

In chancery, State of Alabama, at Mobile.

THE HEIRS OF WM. E. KENNEDY et als., complainants,
vs.
THE HEIRS AND REPS. OF JOSHUA KENNEDY, defendants.

The testimony of Samuel Kitchen, senior, a witness examined on the part of the defendant.

Interrogatories. Mobile chancery court, in the case of Jessee L. Carter and others, heirs of Wm. E. Kennedy, vs. Wm. R. Hallett and others, heirs and representatives of Joshua Kennedy.

Bill and cross bill.

Interrogatories to be propounded to Samuel Kitchen, senr., a witness for the heirs and representatives of Joshua Kennedy, whose answers are to be used as evidence in said cause.

Interrogatory 1st. Were you acquainted with Joshua Kennedy and with William E. Kennedy, in their lifetimes; since when have you

before two witnesses of acceptance, for want of a notary public, and on two leaves of ordinary paper, there being no stamp in use.

Mobile, 25th Sept , 1805. *Mobile, 25th Sept.*, 1805.

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Signed, sealed, and delivered, in the town of Mobile, this 22d day of April, in the year 1814.

ALEXANDER BAUDAIN. [L. S.]

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Given under my hand and seal this 22d day of April, in the year 1814.

LOUIS DOLIVE, *J. Q.*

In presence of—

JOSHUA KENNEDY.

(*Evidence.*)

John Baptiste Trenier, being sworn, saith, that the land claimed by William E. Kennedy had been improved by himself and Lewis Baudain, the brother of Alexander Baudain, former owner of the land, by making a levee from Royal street to the river through the swamp.

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JOHN BAPTISTE ⋈ TRENIER.
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WILLIAM CRAWFORD, *Commissioner.*

LAND OFFICE, ST. STEPHEN'S, ALA.,
April 10*th*, 1845.

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Bill and cross bill.

Interrogatories to be propounded to Samuel Kitchen, senr., a witness for the heirs and representatives of Joshua Kennedy, whose answers are to be used as evidence in said cause.

Interrogatory 1st. Were you acquainted with Joshua Kennedy and with William E. Kennedy, in their lifetimes; since when have you

known them, and where; was your acquaintance with them of an intimate character?

2d interrogatory. Do you recollect when Col. Maxwell was killed in South Carolina; if so, about what time was it?

3d interrogatory. What was the situation of the family of the Kennedys previously to the death of Maxwell; were they men of standing, of property, and of influence, or not?

Interrogatory 4th. What was the situation of William E. Kennedy after the death of Maxwell; had he any property left?

5th interrogatory. When did William E. Kennedy leave Georgia, and under what circumstances; did he leave privately or publicly?

6th interrogatory. Did William E. Kennedy leave debts in Georgia and South Carolina unsatisfied; did he leave any property there; and did he carry any away when he left?

7th interrogatory. What was the age of Joshua Kennedy at the time of the death of Maxwell?

8th interrogatory. What was the means of Joshua Kennedy before and after the death of Maxwell; was he considered poor or well off; had he property, and what did it consist of?

9th interrogatory. Did Joshua Kennedy do business as a merchant after the death of Maxwell, and how long; and when did he fail; or was he successful?

10th interrogatory. When did Joshua Kennedy leave Georgia, and under what circumstances: was he considered poor or wealthy at the time he left Georgia; had he property, and what did his property consist of; did he leave debts unsatisfied; did he return to Georgia, after leaving, to settle his business; do you know whether he had law suits pending when he left for the recovery of lands sued for by him, and did he recover them?

11th interrogatory. Please give the history of the Kennedy family as far as you know it in Georgia and South Carolina.

12th interrogatory. Where did Joshua Kennedy reside in 1807 and 1808, and what business was he engaged in?

13th interrogatory. Are you acquainted with the piece of land where the mill of Joshua Kennedy was built on the Tensaw; when did Joshua Kennedy purchase said land; and of whom; and how did he pay for it?

14th interrogatory. Were you employed by Joshua Kennedy to build his mills on said land; and did you build them; and did you carry them on?

15th interrogatory. When did Joshua Kennedy remove to said land; when did he commence building said mill; when did the mill go into operation; and where did he reside previously to settling at that place?

16th interrogatory. Was said mill burnt by the Indians; if so, when; did Joshua Kennedy have a store burned at that time, or was it cotton which was destroyed; was the mill rebuilt, and when; when did it go into operation again; was he wholly ruined by the Indian war, or was he able to repair his losses?

17th interrogatory. Was the said mill profitable or not; did it cut

much lumber; was the price good between 1816 and 1824; what was the average quantity said mill cut; and what the probable average value of the lumber and profits of the mill; whose property is it now?

18th interrogatory. What were the circumstances of Joshua Kennedy when he commenced building said mill; was he insolvent, or had he property; was he at any time without property, or had he always property; did he own negroes; did he buy and sell, and did he trade much; was he an active business man, or was he of idle habits?

19th interrogatory. How stood the credit of Joshua Kennedy in the year 1824; was he in good circumstances; had he property to the value of ten thousand dollars or not; was he in a situation to have made a purchase to such an amount in the way of trade?

20th interrogatory. Where did William E. Kennedy reside in 1820; and how long did he continue to live there; did he live with Joshua Kennedy, and when did he come to live with him; and where did you live at the time; were you as frequently in company with Joshua and William E. Kennedy?

21st interrogatory. What were the habits of William E. Kennedy as to intemperance; to what extent was he intemperate; was he habitually intoxicated, or was he only so at times; was he intoxicated generally when abroad, or only sometimes so; was he frequently intoxicated when at home, or usually sober when at home; was he ever so intoxicated as not to know what he was doing; and did he ever transact business when drinking?

22d interrogatory. Did the habits of intemperance of Wm. E. Kennedy increase during the two or three last years of his life materially; was there any visible difference in this respect, or were his habits the same as during previous years?

23d interrogatory. Was Dr. Wm. E. Kennedy intelligent; was he capable of managing his own affairs, when he wished to do so, or was he imbecile; did he ever require a guardian; was he a man of determined chracter, or was he of a compliant yielding character; could he be easily controlled or governed by any one; would he submit to be controlled?

24th interrogatory. What business did Dr. Kennedy follow; was he in any business yielding sufficient profit to support himself and family?

25th interrogatory. Do you know whether Wm. E. Kennedy did ever give land or money to Joshua to assist him, or make gifts to him; do you know whether Joshua Kennedy contributed to the support of the family of Wm. E. Kennedy; do you know of his furnishing lumber for building the house of William E. Kennedy; do you know who paid the carpenter for building his house; do you know whether Joshua did furnish provisions for William and his family?

26th interrogatory. Who usually paid the debts of William E. Kennedy; did he pay them himself, or who usually did pay them? Do you know whether Joshua paid any Georgia debts for William E. Kennedy; if so, state it.

27th interrogatory. What was the disposition of Joshua Kennedy towards his brothers and sisters; was he kind and liberal to them, or was he close; did he provide for any others besides William?

28th interrogatory. Do you know who had the custody of the papers of the Price title previous to the year 1824; was it Joshua or William who controlled them, and who appeared to have control of the lands previous to 1824, and during the time of the Spanish government; do you know how the land was obtained from Thos. Price, and who paid Price for it?

29th interrogatory. Do you know any thing of any settlements between Joshua Kennedy and his brothers, Joseph and William E., in the year 1824?

30th interrogatory. What was the situation of the health of Joshua Kennedy in the year 1824; do you know of his going to Havana; what induced him to go there, and for what purpose did he go; was it expected that he would recover from the disease with which he was then affected; was it believed by any of his family that he would never return, or what was the general impression in this respect; what was the belief of Joshua Kennedy himself in this respect, as expressed by him at that time?

31st interrogatory. What physician attended on Joshua Kennedy at that time; how long was he absent; and what was the situation of Wm. E. Kennedy at that time as to health; and how long was he sick of his last illness?

32d interrogatory. Did you have any conversation with William E. Kennedy, [while he] was at the Havana, in relation to their affairs; what were the declarations of Wm. E. Kennedy in that respect?

33d interrogatory. Were you frequently in company with different members of the Kennedy family about the years 1823, 1824, and 1825; and did you, from any quarter, about that time, hear such a thing agitated as a necessity or a request that William E. Kennedy should transfer his property, or any part of it, to Joshua Kennedy, for the benefit of his children; did you hear of any one having made such a request, or that such a transaction was in contemplation, or had taken place, or any thing of that kind; from your intimacy in the family, if such a thing had occurred, or was agitated, and was made public, do you believe it probable you would have heard something of it?

34th interrogatory. When did you hear, for the first time, of such a claim; was it before or after the marriage of Dr. Carter; when was it?

35th interrogatory. What was the character and habit of William E. Kennedy for giving away property; was he more liberal than Joshua in this respect; do you know anything of his giving a square of ground to Caroline McKenzie, or to any of the Innerarity family; what gifts of land do you know of his making?

36th interrogatory. Do you know Maxfield Kennedy; have you seen him in or about Mobile; and when were you present at any conversations between him and William E. Kennedy; what passed in those conversations; what appeared to be the object of his visit; did he

make any claim of William E. Kennedy; if so, what claim was it; and was such claim recognised or not; did any arrangement take place between them; if so, what?

37th interrogatory. Who has had charge of the children of William E. Kennedy since his death; who has provided for them, and in what manner were they provided for; have they been educated, and by whom; where did they reside, and who has provided for them since the decease of their mother.

38th interrogatory. Do you know whether Joshua Kennedy ever speculated in land during the Spanish Government; do you know whether he purchased many tracts of Spanish settlers and others?

39th interrogatory. Do you know whether any debts of Wm. E. Kennedy, contracted in Georgia, were paid after his residence here; if so, how were they paid, who paid them, and when; what were they?

40th interrogatory. Were you a subscribing witness to the bill of sale hereto annexed, marked No. 1; was it executed by Ezekiel Cobb at or about the time of its date; do you know of the transaction therein mentioned; do you know of other negroes purchased by Joshua Kennedy about that time; can you name them, and say what negroes Joshua Kennedy did purchase?

41st interrogatory. Do you know any thing further material for heirs and representatives of Joshua Kennedy, if so, please state.

STEWART & EASTON, *Solicitors for heirs and representatives of Joshua Kennedy.*

Filed 20th October, 1840.

M. J. McRAE, *Register.*

(*Exhibit No.* 1.)

ORLEANS TERRITORY, *Parish of Perdido:*

Know all men by these presents, that I, Ezekiel Cobb, for and in consideration of the sum of six hundred dollars, to me secured to be paid, the receipt of which is hereby acknowledged, have bargained, sold, and delivered, and do by these presents bargain, sell, and deliver, to Joshua Kennedy, a negro man called Mark, about twenty-three or twenty-five years old, which negro man I do by these presents forever warrant and defend to the said Kennedy, his heirs, executors, and administrators, and assigns, from and against myself, my heirs, executors, and administrators, and from and against all manner of claims, titles, and persons, and from and against being affected with any disease at this time.

In testimony of which I have hereunto set my hand and seal, this 9th October, 1811.

EZIEKEL COBB. [SEAL.]

SAMUEL KITCHEN.
DANIEL SULLIVAN.

(*Cross Interrogatories.*)

The city of Mobile, court of chancery, first district, southern chancery division.

Cross interrogatories to be exhibited to Samuel Kitchen, sr., and William Kitchen, witnesses of the defendants.

1st interrogatory. Are you related to Susan Kennedy, one of the defendants; how?

2d interrogatory. When did you first become acquainted with Joshua Kennedy; where did he reside at that time; how long did he reside there?

3d interrogatory. When did he come to reside in the neighborhood of Mobile, on the Tensaw; in whose house did he live; how long did he live there; when was he married?

4th interrogatory. When you first knew him, what business did he follow; when did he commence his store on the Tensaw; who was his partner in the store and mills; how long were they continued before their destruction by the Indians?

5th interrogatory. Did he reside any in Mobile, or did he make occasional visits before the war; did he reside any in New Orleans; did he reside any with Col. Hinson; how was Col. Hinson related or connected with him?

6th interrogatory. How old was Joshua Kennedy when he died?

7th interrogatory. What year did Joshua Kennedy come to live in Mobile, after leaving the Tensaw the second time, when he sold out or quit his mills; what part of Mobile did he come to live in?

8th interrogatory. How often, from 1820 to 1825, a year did you come to Mobile; were you a res'dent at any time in the city, or a visiter; what was the length of your visits?

9th interrogatory. Did you in 1820 receive a deed for a parcel of land lying in the Baudain claim from Wm. E. Kennedy; was the deed handed to you by Wm. E. Kennedy; was not that deed antedated; did you pay any thing for it; did you not hold the land for Joshua Kennedy, and why was the deed made to you; have you not made a deed of the land to Joshua?

10th interrogatory. State the reasons and inducements to the execution of that deed to you, as well on the part of Wm. E. Kennedy, and on the part of Joshua Kennedy; if any money was paid to Wm. E., state how much there was; if there was any price, consideration, or contract about it between Wm. E. Kennedy, Joshua Kennedy, or between you and them, state it.

11th interrogatory. Did you know at the time that James Innerarity had received a deed for that land from Wm. E. Kennedy; state why another deed was taken, or did you know at the date of the transaction any thing about it?

12th interrogatory. The land of which we ask you lies in the upper part of the city, and known as the southern half of the Baudine claim, and is the land which was in controversy between you and Innerarity; do your previous answers apply to this land?

13th interrogatory. Was not Wm. E. Kennedy persuaded to make a conveyance *to* that land to you to avoid a deed he had given to Innerarity; why was it desirable to avoid that deed?

14th interrogatory. Had Wm. E. Kennedy any slaves in his possession at his death; did his wife leave any; who had the care and management of them?

15th interrogatory. State the names and descriptions of any slaves that came to Joshua Kennedy's possession after the death of Dr. Kennedy's wife, and which had belonged to her.

17th interrogatory. How long did Joshua Kennedy keep those slaves; what did he do with them; what was the value of their hire, yearly, during the time of his possession?

18th interrogatory. If you testify in regard to payments by Joshua Kennedy for Wm. E., state to whom they were made, in whose presence made, and the amount. State if you know for what the debt was contracted.

19th interrogatory. If you state any conversation to which Wm. E. Kennedy was a party, state when and where it occurred. What did Wm. E. Kennedy say in that conversation; was he sick or well; in bed or out of bed; who was present; where was Joshua Kennedy?

20th interrogatory. Do you know of Joshua Kennedy, in the years 1821,–'2, and –'3 and –'4, making sales of lands of Wm. E. Kennedy, or for him; what lands were so sold?

GORDON, CAMPBELL & CHANDLER,
For complainants.

Filed 21st October, 1840.

M. J. McRAE, *Register.*

(*Commission.*)

STATE OF ALABAMA, *Mobile county:*

KENNEDY'S HEIRS et al.
vs.
KENNEDY'S EXECUTORS et al.

Mobile county chancery court, first district, southern chancery division, to F. M. Alexander, esq., greeting:

Know you, that we, in confidence of your prudence and fidelity, have appointed you, and by these presents do give you full power and authority, to take the deposition of Samuel Kitchen, senior, witness on the part of Kennedy's executors et al., in a cause depending in our said court, wherein Jessee Carter and wife, Daniel E. Hall and wife, Joseph S. Kennedy, and Martha M. Kennedy, heirs, &c., of Wm. E. Kennedy, deceased, are complainants, and Wm. R. Hallett, and Robert L. Walker, executors of Joshua Kennedy, deceased, Susan Kennedy, widow of said Joshua, John H. Hastie and wife, Mary Clarissa, Augusta, Joshua Kennedy, children, &c., of said Joshua Kennedy, deceased, are defendants; and therefore we command you, that on this day, the 31st day of October, A. D. 1840, at the office of Doctor John

H. Hastie, between the hours of 9 o'clock A. M. and 7 o'clock P. M. of said day, you do cause the said Samuel Kitchen, senior, to come before you, and then and there examine him, on oath, on the interrogatories and cross interrogatories annexed; and that you do take such examination and reduce the same to writing, and return the same annexed to this writ, closed up under your seal, into our said chancery court with all convenient speed, that the same may be read in evidence on the trial of the cause aforesaid

Witness Malcolm J. McRae, register of our said court, at office, this thirty-first day of October, A. D. 1840.

Attest: M. J. McRAE, *Register.*

The manner of the execution of this commission will appear from papers hereto attached, reference being thereto had.

Mobile county, October 31st, 1840.

F. M. ALEXANDER, *Commissioner.*

Answers of Samuel Kitchen, senior, the witness named in the annexed commission, to the interrogatories and cross interrogatories attached thereto.

The said witness being first duly sworn, upon the holy evangelists, true answers thereto to make, did depose and say, in answer to the first interrogatory—

First. That he, deponent, was acquainted with both Joshua and William E. Kennedy well during their lifetimes. Deponent's first acquaintance with them commenced in the year 1796 or 1797, in the State of Georgia, Washington county. He was intimately acquainted with them both, from the year 1811 till the time of their respective deaths.

Second. To the second he answers, that he does not know anything, of his own knowledge, of the subject-matter of the interrogatories.

Third. To the third he answers, that he does not possess any knowledge of the subject-matter of this interrogatory.

Fourth. To the fourth deponent answers, that he cannot answer this interrogatory, having no knowledge of the subject-matter thereof.

Fifth. To the fifth he answers, that he does not know, of his own knowledge, but it was a matter of public talk and notoriety at the time, that William E. Kennedy left Georgia in the night-time, secretly, and crossed the Oconee river before the next morning. He left Georgia, as above stated, about the year 1805, 1806, or 1807. Deponent, at this moment, cannot recollect the precise time without time to refer. Joshua Kennedy told deponent at the time, and frequently, that he, Joshua, had furnished him, William E. Kennedy, with a home, and money to enable him to board, and had seen him across the Oconee river.

Sixth. To the sixth he answers, that he knew Joshua Kennedy very frequently pay debts, and a great many of them, due by William E. Kennedy at the time he left Georgia, since he came to Alabama. Three payments of the old debts of William E. Kennedy were made, both before and after his death, by Joshua Kennedy. Deponent was intimate

with William E. Kennedy in Georgia, before he left that State; does not think he either owned any property, left any behind, nor brought any with him. Deponent thinks he was so well acquainted with him, that if he had he surely should have known it.

Seventh. To the seventh he answers, that, about the time that the rumor of the death of Maxwell broke out, he, deponent, saw Joshua Kennedy, and looked upon him to be aged about sixteen years.

Eighth. To the eighth he answers, that, at the time of the rumored death of Maxwell, and before, Joshua Kennedy was considered to be rich for a boy; he was enterprizing and industrious, of a trading turn, and was said to own a good many lands in the higher or northern regions of the State of Georgia; about that time he was said to trade lands for horses, those for merchandise, and kept a store in Washington county, Georgia, at a place called White Hall, and was said to have realized large profits in money.

Ninth. To the ninth he answers, that Joshua Kennedy did carry on and do business as a merchant, after the rumored death of Maxwell, at a place called Whitehall, in Washington county, Georgia, for some time; he did not fail, but was successful, and was said to realize great gain. Deponent never heard of him failing in any business he undertook.

Tenth. To the tenth he answers, that, after Joshua Kennedy broke up his establishment at Whitehall, as stated in answer to the last preceding interrogatory, he left Georgia, and took with him his younger brother, Joseph P. Kennedy, to Yale college, Connecticut, where they remained till they graduated; for some time after which he, Joshua Kennedy, continued to travel through the northwestern, western, and southwestern States, as he told deponent after his return. He was, at the time of his leaving Georgia, possessed of property, and was said to have money. Never heard that he left any debts behind him unpaid. He never returned to Georgia, after he left it, to settle. It was rumored, and deponent heard that he had left suits pending in Georgia, but deponent does not recollect for what, or how they were terminated.

Eleventh. To the eleventh he answers, that he never knew the family of the Kennedys in the State of South Carolina. In Georgia they all stood fair. William E. Kennedy became bankrupt, and left Georgia, and never afterwards returned, as deponent knew or heard of. Deponent was never acquainted with Maxfield Kennedy, in Georgia, nor had he any with Josiah; Andrew Kennedy deponent was pretty well acquainted with, and he stood pretty fair in Georgia. Joseph P. deponent knew as a youth in Georgia, before he went to college. Joshua deponent knew very well; he stood very fair; had a store, and done business at Whitehall, as before stated, and had, at the same time, his brother, Joseph P., as a clerk, with a portion of his goods, at Montgomery county court-house, Georgia.

Twelfth. To the twelfth he answers, that, about the years 1807 and 1808, Joshua Kennedy lived and kept a little store, on the Tensas lake, on

the Alabama river, in what is now the county of Baldwin, then Washington county.

Thirteenth. To the thirteenth he answers, that he is acquainted with the pieces of land, and knows the lines all round it, described in this interrogatory. Deponent does not recollect when Joshua Kennedy purchased it. He purchased it from Diego McVoy, and paid for it in slaves.

Fourteenth. To the fourteenth he answers, that he was employed by Joshua Kennedy to build mills on the lands mentioned in this interrogatory; did build a part of them, and afterwards carried them on.

Fifteenth. To the fifteenth he answers, that Joshua Kennedy removed to the lands mentioned in this writing along in the latter end of the year 1809. The mill did not get into operation till in the year 1812, in consequence of freshets several times carrying away the dam. He commenced building it, however, in 1809; and, previous to his removal to the mill place, he had resided at a place called Tensas lake, on the Alabama river.

Sixteenth. To the sixteenth he answers, that the mills alluded to in this interrogatory were burnt in the year 1803, supposed by the Indians. Joshua Kennedy had no store burned at that time. His gin press, and quantity of cotton, was burned and destroyed by fire at the same time, together with the mills, &c. To do so, however, he sold an interest to Sam'l H. Garrow, and another to his brother, Joseph P. Kennedy. He, the year after, purchased out Garrow, and the next succeeding year Joseph P. Kennedy's interest in the mills.

Seventeenth. To the seventeenth he answers, that the mills alluded to in this interrogatory were profitable, and cut great quantities of lumber from 1816 to 1824, which was sold for a very high price—the general price for which it was sold being about twenty dollars per thousand. The mills cut, upon an average, betwixt five and six hundred thousand feet per annum during those years. The profits were great. The property now belongs to the heirs of Joshua Kennedy.

Eighteenth. To the eighteenth he answers, that he does not know the resources of Joshua Kennedy at the time he commenced building the said mills. His means appeared to be abundant. He met his payments, and paid off his workmen promptly. He was not, at that time, nor since, nor before, insolvent; always had property; owned negroes sufficient to carry on his business; bought, and sold, and traded extensively. He was an active business man, and of extraordinary industrious habits.

Nineteenth. To the nineteenth he answers, that the credit of Joshua Kennedy, in the year 1824, stood well; he was in good circumstances, and so considered by every body who knew him; he was possessed of property worth ten times ten thousand dollars, and to have paid for it in the way of trade at any day or hour of the night.

Twentieth. To the twentieth he answers, that William E. Kennedy resided, in the year 1822, at Bon Sunn; he thinks he came to live with Joshua in 1822, at his house at the mills, in Baldwin county, and,

when Joshua moved over to Mobile, went over with him, and continued to reside with him generally till the time of his death. Deponent resided at and superintended the mills, and was with Joshua and William E. Kennedy every day till they moved over to Mobile, which was in the year 1823.

Twenty-first. To the twenty-first he answers, that William E. Kennedy drank spirituous liquors sometimes freely. Deponent never considered him a drunken man; never [has] seen him to say drunk; but has seen him at times intoxicated; he would at times drink freely when abroad, but not always; seldom became intoxicated at home; at home he was generally sober. Deponent never saw him so greatly intoxicated but that he knew perfectly well what he was about, and has often seen and heard him refuse to make any trade, or transact any business, when drinking.

Twenty-second. To the twenty-second he answers, that William E. Kennedy's habits, in every respect, continued about the same during the whole period of deponent's acquaintance with him.

Twenty-third. To the twenty-third he answers, that Dr. William E. Kennedy was quite an intelligent man, and capable of managing his own affairs when he chose to do so; he was not imbecile, and never required a guardian; was a man of determined character, and was not of a compliant yielding disposition, quite the reverse; could not nor would not submit to be controlled by any body.

Twenty-fourth. To the twenty-fourth he answers, that Dr. Kennedy followed no business of any importance; he sometimes practised medicine a little; and, after he lived in the family of Joshua Kennedy, he acted as his family physician; he did not follow any business the profits of which would have sufficed him for the support of himself and family.

Twenty-fifth. To the 25th he answers, that he never knew William E. Kennedy to assist Joshua Kennedy, or render him any aid whatever, in a pecuniary point of view; Joshua Kennedy did always contribute to the support of the family of William E. Kennedy; indeed, pretty much brought them up, having clothed, schooled, and otherwise done by them, just as he did by his own children; Joshua Kennedy sawed the lumber, and sent it down to William E. Kennedy to build his house at Bon Sunn; and Joshua told deponent at the time that he also paid the carpenter's bills for building. Deponent knows that when he, deponent, would come to Mobile from the mills with cargoes of lumber belonging to Joshua Kennedy, and when Joshua sometimes came along with it himself, he complained frequently of the heavy bills that would be presented to him for provisions, &c., &c., which had been furnished William E. Kennedy for his establishment at Bon Sunn.

Twenty-sixth. To the 26th he answers, that Joshua paid the debts of William E. Kennedy generally; he has known Joshua to pay the debts of William E. Kennedy, contracted in Georgia, both before and since the death of William E., and many times heard him talking des-

pondingly, and wondering when he ever would get through with paying the Doctor's old debts; he also paid many of the debts of the Doctor, contracted after he came here, and he has heard Joshua repeatedly say, and he verily believed him when he heard him, that if any body else but himself had undertaken to have adjusted the debts of the Doctor, that his estate would never have sufficed to have paid them, and his children would have had nothing left them; that his continued advancing on account of the Doctor, (both before and after his death,) kept him, Joshua, cramped in his business; these conversations occurred at different times, from the time he knew Joshua Kennedy and the Doctor, in this neighborhood, until within a few years before his death, and both before and after the death of the Doctor, William E. Kennedy.

Twenty-seventh. To the 27th he answers, that Joshua Kennedy was kind, liberal, and beneficent to all his brothers and sisters, and to all his relations whom deponent knew; he was continually advancing money, goods, granting facilities, not only to his brothers and sisters, but to his nieces and nephews, (their children,) as often as they came here. To those who resided here, and were near him, he acted emphatically the character of a kind, indulgent, and beneficent parent.

Twenty-eighth. To the 28th he answers, that he does not know in whose custody the papers of the Price title were previous to the year 1824; Joshua Kennedy controlled it, and also the lands called for by those papers. Deponent perfectly well recollects that Doctor William E. Kennedy told this deponent, and he thinks before his conveyance of it to Joshua Kennedy, that he, Doctor William E. Kennedy, had entertained the project of purchasing the Price claim, but could not command the means; but that, luckily, Joshua Kennedy came on in time, and possessed the necessary funds, and made the purchase of the Price claim from Thomas Price, and paid him for it out of his own funds; Joshua Kennedy appeared to, and did have, the control of the Price grant lands previous to 1824.

Twenty-ninth. To the 29th he answers, that he does not know of his own personal knowledge any thing of the settlement made between Joshua Kennedy and his two brothers, William E. and Joseph P.; when Joshua Kennedy came over to the mills, he told deponent that he had made a settlement with both his brothers; this was in 1824.

Thirtieth. To the 30th he answers, that in the year 1824, and immediately before, and at the time of his departure to the Havana, his health was bad; he did go to Havana about the end of that year; he was induced, as he told deponent, to go there from various reasons—his health. He took with, and caused to proceed, and soon after to follow him, several cargoes of lumber, intended and calculated for that market. He also went on purpose to examine into and see certain land claims which he held for lands in Mobile and vicinity, the records of which it was supposed had been carried from Pensacola to the Havana at the departure of the Spanish authorities from Pensacola thither. It was generally doubted, by those most intimately acquainted with him, whether

he would recover from, or survive long, the disease with which he was then afflicted. He entertained great apprehensions himself—apprehensions were entertained by some that he would never survive to return; deponent, however, thought the trip would tend greatly to restore him to health or at least to his relief.

Thirty-first. To the 31st he answers, that Doctor William E. Kennedy was the attending physician of Joshua Kennedy at the time of, and previous to, his departure, as he had always before been, and continued to be, till the time of his death. He was absent from one month and a half to two months; at the time of the departure of Joshua, and during his absence, the health of William E. Kennedy was as good as it had been for many years. He was stout and hearty. Deponent had been frequently with William E. Kennedy immediately preceding his last illness, but departed from Mobile to go home to the mills in Baldwin just before he was seized with his last illness, and was not with him during its continuance. It lasted about three weeks, as deponent was informed at the time.

Thirty-second. To the thirty-second he answers, that deponent did have conversations with William E. Kennedy, during the absence of Joshua Kennedy to *the* Havanna, in relation to their affairs. Deponent distinctly recollects that he came over to Mobile from the mills during the absence of Joshua Kennedy, and, as it happened, on the very day a report had reached Mobile, and was circulated, that Joshua Kennedy had died on his passage out, and, as usual, went to the house of Joshua Kennedy, where he met Doctor William E. Kennedy, who, in conversing about the unpleasant intelligence, expressed great happiness and satisfaction, that if the news they had heard (of the death of Joshua Kennedy) was true, that they, Doctor William E. Kennedy and Joshua Kennedy, had made a final settlement of all their affairs some time previous to his, Joshua's, leaving Mobile, so that there could be no difficulty or trouble betwixt him (William E.) and the heirs of Joshua. That they had made a final settlement.

Thirty-third. To the 33d he answers, that in the years 1823, 1824, and 1825, and before and after that time, he was frequently in the company of, and on the terms of, the utmost intimacy and confidence of each of the Kennedys, and with all the different members of each; and deponent never did hear from them or either of them, (the Kennedys,) or from any member of their or either of their families, or from any other person whatever, that such things as the conveyance alluded to in this interrogatory, intimated, suggested, or spoken of, nor nothing relating *to* thereto, till since the commencement of this suit in chancery. Defendant's intimacy with the Kennedys, and all and every member of their families, and his means of information, were such, that he most verily believes that if such thing had ever been proposed, requested, talked of, or mooted in any matter, he *shall* have heard of it; but, as before stated, he never did hear anything of it.

Thirty-fourth. To the 34th he answers, that he first heard of the pretended claim alluded to in this interrogatory, after the marriage of

Doctor Jessee Carter with Mary Louisa, one of the daughters of Doctor William E. Kennedy, some two years since.

Thirty-fifth. To the 35th he answers, that deponent never knew of William E. Kennedy giving away any property to any body at any time. He was by no means so liberal in that respect as Joshua Kennedy. He was close and stingy even in small matters.

Thirty-six. To the thirty-sixth he answers, that he does know, and has seen, Maxfield Kennedy in Mobile and at the mill in Baldwin county frequently. He remembers having seen him here last in 1823. Deponent was never present and in hearing of any conversation between Doctor William E. Kennedy and Maxfield Kennedy on the subject of their pecuniary matters; but he very well knew, and it was a matter of notoriety to all familiar with the families of the Kennedys, that the object of Maxfield Kennedy's visits to Mobile were for the purpose of obtaining money from William E. Kennedy which he owed him. He, deponent, does not recollect that he ever heard William E. Kennedy acknowledge the justness of Maxfield's claim against him, but he did learn from Joshua Kennedy, and verily believes, that Joshua Kennedy did advance him money on account of his claim against William E. Kennedy.

Thirty-seventh. To the 37th he answers, that Joshua Kennedy took charge of the children of William E. Kennedy, and provided for them amply, educated and raised them as his own, since the death of their mother. They generally resided with his own children in his house; indeed, always, except when boarding out, going to school, &c.

Thirty-eighth. To the 38th he answers, that Joshua Kennedy was reported to have speculated largely in lands in Georgia before he came to this country. He was engaged in speculating in lands during the time of the Spanish government in Florida. Was continually purchasing claims to the lands and grants from all who had to sell with whom he met, Spanish settlers and all others.

Thirty-ninth. To the 39th he answers, that he does not know of his own personal knowledge, but frequently and often has heard, Joshua Kennedy complaining despondingly of the great number of old debts of William E. Kennedy he had from time to time to pay, wondering when and whether he would get done with them. Deponent does not recollect what particular debts they were.

Fortieth. To the fortieth he answers, that he was and is a subscribing witness to the bill of sale, marked No. 1, referred to in this interrogatory; it was executed at the time by the parties and for the purposes it purports, and in good faith; about that same time, he bought a negro woman called Mary, and two or perhaps three children. He also bought another family of negroes, about the same time, from one Andrew Milton. The name of the woman was Dolly; her children, George, Minney, and Charley.

Forty-first. *He* answers, to the forty-first and last interrogatory the witness saith, that he does not know of any matter or thing not stated above, as he now recollects, that would benefit the defendants in this cause.

SAMUEL KITCHEN.

Sworn and subscribed before me, the undersigned commissioner named in the commission, this 31st day of October, A. D. 1840.

F. M. ALEXANDER,
Commissioner.

Answers of Samuel Kitchen, sen., to cross interrogatories.

The answers of Samuel Kitchen, sen., the before sworn and subscribing witness, to the cross interrogatories annexed to the commission, and interrogatories thereto attached. The said witness being duly sworn, in answer to the first interrogatory saith:

First. That Susan Kennedy is deponent's daughter.

Second. To the second he answers, that he first became acquainted with Joshua Kennedy in 1796 or 1797; Joshua Kennedy then resided in Washington county, in the State of Georgia; deponent knew him to reside there about two years.

Third. To the third he answers, that Joshua Kennedy came to reside in the neighborhood of Mobile or Tensas in about the year 1806; he lived in his own house until the time of his death; he was married in the year 1818.

Fourth. To the fourth he answers, when deponent first knew Joshua Kennedy he followed the business of merchandising; deponent thinks he commenced his store on the Tensas about 1807 or 1808; his partners in the store were John Hinson and Theodore Brightwell; they neither of them were concerned in the mill, nor had they any interest in the mill; this deponent knows of his own knowledge, being present and knowing their contract at the time; the store was broken up in the year 1809, and in the same year Kennedy commenced erecting the mill which was destroyed by the Indians in the fall of the year 1813.

Fifth. To the fifth he answers, that Joshua Kennedy did not reside in Mobile previous to the war, but visited the town frequently; some months he spent half of his time in Mobile; he never resided in New Orleans, but was frequently there trading; he did not reside any with Col. Hinson and Joshua Kennedy were half brothers, being born of the same mother.

Sixth. To the sixth he answers, that Joshua Kennedy was within a few days of sixty years old when he died.

Seventh. To the seventh he answers, that Joshua Kennedy never came to Mobile to reside but once, which was in the year 1823; he then settled on St. Louis street; he continued to reside in Mobile till his death; he never sold his mills.

Eighth. To the eighth he answers, that he visited Mobile so frequently between the years 1820 and 1825, that he cannot tell the number of the times; he was continually passing to and fro the mill and the city of Mobile. Deponent never resided in Mobile, but remained in Mobile on his visits various lengths of time, from one day to two months at a time.

Ninth. To the ninth he answers, that in the year 1820 he received from William E. Kennedy, for a parcel of the Baudine claim of land. The deed was delivered to this deponent by Joshua Kennedy, and this

deponent does not believe the deed was antedated; it was not that he knows of. Deponent paid seven hundred dollars for it; deponent held the land for himself and not for Joshua Kennedy, or any body else. Deponent cannot give any other reason for the deeds being made to him other than the purchase of the land conveyed by, and the consideration money expressed in, it. Deponent did subsequently make a deed of the land to Joshua Kennedy.

Tenth. To the tenth, that he knows no other reason or inducement that could have influenced William E. Kennedy in making the deed referred to in this cross interrogatory to deponent, other than the consideration money expressed on its face. Joshua Kennedy paid William E. Kennedy for the land for this deponent. There was no contract, stipulation, or understanding, that this deponent knew or knows of, other than he has stated above.

Eleventh. To the eleventh he answers, that deponent had heard, and was aware, that James Innerarity had received a deed from William E. Kennedy for the same land, but deponent was perfectly willing to risk and test the validity of it. Deponent does not know, nor never heard, that any other deed was taken by James Innerarity for the same land; if there was he, deponent, did not know anything about it, either at that time or since.

Twelfth. To the twelfth he answers, that his previous answers do apply to the land described in this cross interrogatory.

Thirteenth. To the 13th he answers, that he has no knowledge that William E. Kennedy was persuaded to deed the land mentioned in this cross interrogatory to him, deponent, to avoid the deed it was said he had made to James Innerarity. Deponent is not aware that it was desirable to avoid the supposed deed by any body, till it became his desire after he had become the purchaser of it.

Fourteenth. To the fourteenth he answers, that William E. Kennedy had slaves in his possession at the time of his death. Deponent does not know whether his wife had any or not.

Fifteenth. To the 15th he answers, that deponent does not know of any slaves belonging to the wife of William E. Kennedy, in her own right, which came with the possession of Joshua Kennedy after her decease.

Sixteenth. There is no sixteenth cross interrogatory.

Seventeenth. To the 17th he answers, that deponent, knowing nothing of the subject matter, *of* is unable to answer this interrogatory.

Eighteenth. To the eighteenth he answers, that deponent cannot recollect, and does not know, to whom payments were made by Joshua Kennedy of the debts of William E. Kennedy, nor their amounts, only from what he learned from Joshua in frequent conversations at various times held with him upon the subject.

Nineteenth. To the 19th he answers, that he hath only once in this examination alluded to any conversation to which William E. Kennedy was a party, and that is, that mentioned in his, deponent's, answer to the thirty-second direct interrogatory, the substance of which

is there detailed at length. Doctor Kennedy was then in the enjoyment of his usually good health, sober, and at the time attending to the duties of his business. At the same time Joshua Kennedy was absent on his voyage to Havanna, and reported to be dead; and also that alluded to in deponent's answer to the twenty-eighth direct interrogatory, at which time he was in good health and sober, and Joshua Kennedy was not present.

Twentieth. To the twentieth and last cross interrogatory this deponent answers, that he does not recollect that Joshua Kennedy *died*, in the years 1821, 1822, 1823, or 1824, sell any lands belonging to William E. Kitchen.

SAMUEL KITCHEN.

Sworn and subscribed the 31st October, 1840.

F. M. ALEXANDER, *Commissioner.*

THE STATE OF ALABAMA, *Mobile county:*

I, Francis M. Alexander, the commissioner named in the commission hereto attached, hereby certify, that the foregoing twenty-two pages and upwards contain the answers of Samuel Kitchen, sr., the witness therein named, in his own words, as by him delivered in answer to the interrogatories and cross interrogatories, annexed to the undersigned commission, and by him reduced to writing as above; and which testimony being read over and approved by said witness, was subscribed in due form of law, and in pursuance of the commission hereto annexed. I further certify, that I am not of kin to either of the parties to the suit in which this testimony is to be used, nor in any manner whatever interested in the issue thereof.

In testimony whereof I have hereto set my hand and affixed my [L. S.] seal, the 31st day of October, in the year 1840.

F. M. ALEXANDER, *Commissioner.*

THE STATE OF ALABAMA, *Mobile county:*

I, Malcolm J. McRae, register of the court of chancery at Mobile, do hereby certify, that the foregoing thirty-one pages and fifteen lines contain a complete and correct transcript of the testimony of Samuel Kitchen, senior, heretofore taken on the part of the defendants, in a certain cause then pending in our said court of chancery, wherein the heirs of William E. Kennedy were complainants, and the heirs and representatives of Joshua Kennedy, deceased, were defendants, as the same remains of record in my office.

In testimony whereof I have hereunto set my hand, and affixed the seal of said court of chancery, this twenty-seventh day of March, in the year of our Lord one thousand eight hundred and forty-six, and the seventieth year [of the independence of the United States of America.]

[L. S.] Attest: M. J. McRAE, *Register.*

Exhibit—Decree.

HEIRS OF WILLIAM E. KENNEDY
vs.
HEIRS OF JOSHUA KENNEDY

This cause came on to be heard on the bill, cross bill, answers, and proofs and exhibits; after the pleadings and proofs had been submitted, and the argument about to proceed, the plaintiffs in the cross bill ask leave to dismiss the same, which was allowed by the court, reserving the right to the defendants in that bill to the use of the evidence in that case in the same manner as if the bill had not been dismissed. And the principal cause having been fully argued by counsel, it is declared by the court, that it is fully proved that the deed from William E. Kennedy to Joshua Kennedy, dated 13th day December, 1824, was not made upon any consideration deemed valuable in law, but for the purpose of enabling Joshua Kennedy to secure and provide for the management of the estates in which he was interested, and to secure an adequate provision for the children of William E. Kennedy, his brother. And it is declared that Joshua Kennedy and William E. Kennedy were jointly interested in the lands embraced in the Price and McVoy claims, and that the Baudain claim was covered by the Price claim. It is further declared that the plaintiffs, as heirs of William E. Kennedy, are entitled to an account of the moneys received by said Joshua Kennedy in his lifetime, and by his executors, Hallett and Walker, since his death, as trustees for said plaintiffs, upon all sales of lands embraced either in the Price, McVoy, or Baudain claims; and also to an account from said Hallett and Walker of the moneys received by said Joshua Kennedy, in his lifetime, as guardian of the plaintiffs, and as administrator of the effects which were of the said William E. Kennedy.

And it is ordered, adjudged, and decreed, that the said plaintiffs (children of William E. Kennedy) be admitted into the possession of the undivided half of the Price, McVoy, and Baudain claims, that were not sold and conveyed by the said William E. Kennedy or Joshua Kennedy, or the said Hallett and Walker. And that it be referred to the master to prepare a conveyance to the said plaintiffs, Mary Louisa Carter, Joseph S. Kennedy, Delphine Hall, and Martha M. Kennedy, of one undivided half of all the lands in said claim not disposed of before the date of this decree by the said parties in the said claims mentioned in the deed of 1824, before referred to, which deed shall be executed by the said Hallett and Walker under the forms contained in the will of Joshua Kennedy, and in pursuance of this decree. And it is referred to the master to state the accounts between the plaintiff and the defendants, Hallett and Walker, executors, as representing Joshua Kennedy in his several capacities as the guardian of the children of William E. Kennedy, and as trustee under the deed of the 13th December, 1824, between William E. Kennedy and Joshua Kennedy; and also to take an account between the plaintiffs and the defendants, Hallett and Wal-

ker, on account of lands sold or conveyed by the said defendant since the death of said Joshua. And it is further ordered, in taking such account, that the said defendants, Hallett and Walker, be allowed all fair credits upon the same. And it is further ordered, that the said Hallett and Walker pay the costs of this suit, and the cross suit, out of the estate of Joshua Kennedy.

Signed, A. BOWIE, *Chancellor*.

STATE OF ALABAMA, *Mobile county:*

I, Malcolm J. McRae, register of the court of chancery for the first district of the southern chancery division of said State, at Mobile, do hereby certify, that the foregoing two pages and twenty-three lines contain a correct copy of a decree pronounced in a certain cause heretofore pending in said court of chancery, wherein the heirs of William E. Kennedy were complainants, and the heirs and representatives of Joshua Kennedy, deceased, were defendants; by the Hon. A. Bowie, chancellor, presiding at a November term, A. D. 1840, of said court, and on the 28th day of said month of November, 1840, the same being a day of said term.

In testimony whereof I have hereunto set my hand, and affixed the seal of said court, this fifth day of January, in the year of our Lord A. D. 1847, and of the American independence the 71st year.

Attest, M. J. McRAE, *Register*.

Exhibit—decree—Wm. Kitchen.

In chancery, State of Alabama, at Mobile.

WILLIAM KITCHEN, complainant,
vs.
JAMES INNERARITY, defendant.

A copy of the decree in the foregoing stated cause, pronounced by his honor P. T. Harris, at the April term, A. D. 1832, of the circuit court of Mobile county, exercising chancery jurisdiction.

(Decree.)

This cause having been set for a final hearing, and coming on to be heard on bill, answer, and exhibits, it is ordered, adjudged, and decreed, that the said respondent convey to the said complainant the land described in the bill of complaint upon the complainants paying the said respondent the debt and interest, as set forth in the answer of the respondent, being the amount of the verdict in the case of John Forbes & Co. against B. Lanier, executor, &c., and lawful interest thereon, until paid, and that each party pay his own costs.

Given under my hand and seal.

P. T. HARRIS. [SEAL.]

THE STATE OF ALABAMA, *Mobile county:*

I, Malcolm J. McRae, register of the court of chancery for the first district of the southern chancery division of said State, at Mobile, hereby certify, that the above decree is a true and correct copy from the

minutes of the spring term, A. D. 1832, of the circuit court of Mobile county, exercising chancery jurisdiction, said decree being pronounced by his honor P. T. Harris, in the case therein pending, wherein William Kitchen was complainant, and James Innerarity defendant.

It is hereby further certified, that this is all that *this is all that* remains of record in my office in relation to said cause.

In testimony whereof I have hereunto set my hand, and affixed the seal of said court of chancery, this the twenty-fourth day of April, [SEAL.] in the year of our Lord one thousand eight hundred and forty-five, and of the American independence the sixty-ninth year.

Attest: M. J. McRAE, *Register.*

Exhibit.

Mr. William Crawford, commissioner of land claims east of Pearl river.

Please take notice, that I claim a tract of land, containing six hundred arpens, bounded on the east by the granted lots in the town of Mobile, and the Mobile river; on the south side by Farrer's land, and on the west side by vacant lands, by virtue of a Spanish grant from Manuel Gayoso de Lemos, Governor of the province of Louisiana, dated 18th November, 1798, and confirmed and ordered to be surveyed by a decree of the intendant Morales, of the 18th September, 1806, Thomas Price, and conveyed to the said Price by me, as will more fully appear by reference by the annexed grant and conveyance, and also to the original grant and confirmation, and order of survey, and a conveyance made before the commandant of this place in the intendant's office.

WILLIAM E. KENNEDY.

MOBILE, 12*th August*, 1814.

Translation from the Spanish.

SENOR GOVERNOR: Thomas Price, interpreter of the English language in this place, with the most humble respect represents to your excellency, that a tract of land containing twenty arpens in front upon the west side of the river and town of Mobile, bounded on the north part by lands formerly owned by Terry and Mazinier, and on the east by lots granted in the town of Mobile and the river of said place, extending back thirty arpens, is vacant, and belongs to no one except the king, and which he is desirous of settling himself upon; wherefore, he solicits the favor of your excellency to grant him the donation of said twenty arpens in front, and thirty in depth, and to order to have the necessary papers made out for the purpose; which will be a favor that he will acknowledge with the greatest gratitude.

THOMAS PRICE.

MOBILE, 16 , 1798.

SENOR GOVERNOR: The petitioner was for many years, and is now, interpreter of this place. He is a very useful person, and can be es-

tablished with facility upon the land he solicits; that, according to the information, which I have taken still belongs to the king, and no individual; and your excellency will be pleased to direct what is proper to be done. MANUEL DE LANZOS.

MOBILE, 19*th April*, 1798.

(*Decree.*)

NEW ORLEANS, 18*th Nov.*, 1798.

The commandant of Mobile is ordered to establish the petitioner upon the twenty arpens in front of the land he solicits, by the depth of thirty, in the place mentioned in the preceding memorial, on being vacant, and to deliver me the documents of survey for the purpose of furnishing the proprietor the title in form.

MANUEL GAYOSO DE LEMOS.

The above is conformable to the original which is in this commandancy under my charge, to which I have recourse, and, at the request of the interested, give the present before two witnesses of assistance *of assistance*, in default of a notary public, and on ordinary paper, there being no stamp in use. Mobile, 22d December, 1805.

FRANCIS MAXIMO. DE ST. MAXENT.

FRANCIS CANEDO,
JOHN LAIZ.

(*From the English.*)

Know all men by these presents, that I, Thomas Price, of Mobile, and Mississippi territory, do by these presents bind myself, my heirs, executors, administrators, and assigns, in consideration of the sum of five hundred dollars to me in hand paid by William E. Kennedy, of the said territory, the receipt of which I do hereby acknowledge, have remised, released, and forever quit claim, and do by these presents remise, release, and forever quit claim, unto the said Wm. E. Kennedy, his heirs, administrators, and assigns, forever, to all that tract of land granted to me by Governor Manuel Gayoso de Lemos, of the 18th November, 1798, of five hundred and forty acres of land, situated in the vicinity or suburbs of Mobile, (except ten acres on the north boundary of said tract adjoining Tensas line, which I reserve for myself and heirs,) bounded on the north by the said Tensas lands, and those of Mazinier, on the east by the plan of Mobile, on the south by lands claimed by Simon Andre and Favre; to have and to hold the same, together with all the privileges and appurtenances thereunto belonging, to him, the said William E. Kennedy, his heirs, executors, and administrators, and assigns forever.

In witness whereof, I have hereunto set my hand and affixed my seal, this 25th day of August, in the year of our Lord one thousand eight hundred and thirteen.

THOMAS PRICE.

Signed, sealed, and delivered in presence of us, the day and year last written.

THOMAS POWELL,
FRANCIS GIRARD,
MICHAEL MCKINNEY.

Proved in open court, by Francis Girard, 20th October, 1813.

A. FARRAR, *Register and Clerk.*

Know all men by these presents, that I, Thomas Price, of West Florida, have made, constituted, and appointed, and by these presents do make, constitute, and appoint, William E. Kennedy, of said province, my true and lawful attorney, irrevocable, for me, and in my name, his heirs and administrators, for the sole use of him, the said Kennedy, to ask, demand, and receive, and carry through my surveys of lands, lots in the vicinity or suburbs of Mobile, giving, and by these presents granting, to my said attorney my full power and authority, in my name, place, and stead, to do all and every act and acts, thing and things, devise and devises, in the law whatsoever, for the carrying the said surveys into complete titles, hereby ratifying, confirming, and allowing whatsoever my said attorney shall lawfully do, or cause to be done, in or about the premises.

In witness hereunto, I have set my hand and affixed my seal.

Mobile, 24th November, 1806.

THOMAS PRICE. [SEAL.]

Witness—BENJAMIN DUBROCA,
ZINON ORSO.

Know all men by these presents, that I, Thomas Price, of West Florida, do bind myself, my heirs, and assigns, in consideration of the sum of two hundred dollars, to me in hand paid by William E. Kennedy, of said province, and the receipt [of] which I do hereby acknowledge, have remised, released, and forever quit claimed, and do by these presents remise, release, and forever quit claim, unto the said William E. Kennedy, his heirs, and assigns forever, to all that tract or concession of land granted to me by the intendant's decree, of the eighteenth September, eighteen hundred and six, for about five hundred acres of land in the vicinity or western suburbs of Mobile, (except ten acres in the northwest corner of said survey, which I reserve for myself.) To have and to hold the same, together with all the privileges and appurtenances thereunto belonging, to him, the said William E. Kennedy, his heirs and assigns forever.

In witness whereof, I have hereunto set my hand and affixed my seal, on the 22d of November, 1806.

THOMAS PRICE. [SEAL.]

Signed [and] sealed in the presence of us.

Witnesses—BENJAMIN DUBROCA,
ZINON ORSO.

Evidence.—Benjamin Dubroca, being sworn, declares that about six or seven acres of the above land had been cultivated by a free negro about two years ago, and is now cultivated by the claimant.

BENJAMIN DUBROCA.

Sworn and subscribed to before me, the 31st August, 1814. Bartholomew Lorent swears to the same as the above deponent.

his
BARTHOLOMEW ⋈ LORENT.
mark.

Sworn and subscribed to before me, the above day.

J. Q.

Report No. 3.—Register of claims to land in the district east of Pearl river, in Louisiana, founded on orders of survey, (requettes,) permission to settle, or other written evidence of claim, derived from either the French, British, or Spanish authorities, which in the opinion of the commissioner ought to be confirmed.

Number 103.—By whom claimed, William E. Kennedy; original claimant, Wm. Price; nature of claim, and from what authority, Spa. ord. settlement; date of claim, 18th November, 1798; quantity claimed, 60 arpens; where situated, near Mobile; by whom issued, Gayoso; surveyed, when, by whom; No. survey; cultivation and inhabitation, from 1812 to 1814.

WILLIAM CRAWFORD, *Commissioner*.

Remarks on the preceding claims.

Though many of the preceding claims have originated since the treaty of St. Ildefonso, and are therefore void, yet it is conceded that they ought to be confirmed, so far only as they do not exceed eight hundred arpens, under the equity of the 14th section of the act of Congress, passed on the 26th March, 1804, and the second section of the act passed on the 2d March, 1805; which last secures to the actual settler, on the 20th day of December, 1803, (that being the time of the establishment of the American Government in a part of Louisiana,) a tract of land of one mile square, provided such settlement was made with the permission of the proper Spanish officer. Most of the preceding claims, which originated previous to the 1st October, 1800, are forfeited under the Spanish law for the want of inhabitation and cultivation within the time required by that law, and must rest for confirmation on the act of Congress above recited. It is conceived, therefore, that the quantity confirmed ought not to exceed eight hundred arpens. It may also be observed, that many of the claims have emanated from commandants, whose power to permit to settle did not extend beyond eight hundred arpens. Where a settler who had a claim has fairly purchased other claims, it is supposed that the law recognises in the purchaser all the right which the original claimant has; and that two or more such claims, when the requirements of the law have been complied with, ought to be confirmed. The instructions of Gayoso seem to acknowledge a right

in the settler after three years inhabitation and cultivation. When a tract of land has been inhabited and cultivated for three years, with the permission of the proper Spanish officers, I have supposed that the claim ought to be confirmed, though the land has not been regularly inhabited and cultivated; afterwards, if it has not been subsequently granted by the Spanish Government.

WILLIAM CRAWFORD, *Commissioner.*

(*Copy.*)

ST. STEPHEN'S, *November 23d*, 1807.

SIR: I beg leave, most respectfully, to solicit your attention to part of my reports on the land claims in West Florida. The claim to which I particularly refer is that of William E. Kennedy, No. 103, under the following head: "Register of claims to land in the district east of Pearl river, in Louisiana, founded on orders of survey, permission to settle, or other written evidence of claim, derived from either the French, British, or Spanish authorities, which, in the opinion of the commissioner, ought to be confirmed."

When this claim was reported on there was no evidence to impeach it, and evidence was adduced to prove that the land claimed had been cultivated according to the Spanish regulations for granting land. No survey accompanied the claim, and it was impossible to know what ground was covered by it. But it is now ascertained that this claim takes in Fort Charlotte, and most of the public buildings in and near the town of Mobile. From this circumstance, and some others, I am now convinced that the claim is fraudulent and ought to be rejected. I beg that this letter may be taken as a part of my report upon the above claim of William E. Kennedy, and that it may be laid before Congress, together with my general report.

I have the honor to be, with very great respect,

Your obedient servant,

WILLIAM CRAWFORD.

LAND OFFICE, ST. STEPHEN'S, ALA.,

10*th April*, 1845.

I do hereby certify, that the annexed and foregoing transcripts of the claim of Wm. E. Kennedy, in the right of Thomas Price, is a correct copy from the book of records of claims laid before and acted on by the commissioner, Wm. Crawford, as the same is found in this office.

Witness my hand and seal, (private,) having no seal of office.

JAMES MAGOFFIN, *Register.* [SEAL.]

To the Register and Receiver, at Jackson court house, acting as commissioners of land claims.

You will please take notice that I revive my claim to a tract of land, situate in the county of Mobile, bounded on the north side by land belonging to John Forbes & Co., on the east side by land granted in the town of Mobile, and a line beginning at a red cedar picket, marked B; thence running N. 62 E., 15 French perches; thence S. 10° E., 40

French perches, to a cedar picket; thence N. 80 E., 38 French perches to a cedar picket, on the west margin of the River Mobile; which two last lines are to the west and south [of] Fort Charlotte, and does not include the said fort or public buildings, as is erroneously represented in the letter of William Crawford, esq., late land commissioner, attached to the record of this claim; thence running down said river S. 10 W., 20 French perches, to a red cedar picket marked E; thence south eighty degrees west, thirty French perches, to the northwest corner of Miguel Eslava's lots, at a cedar picket marked P; thence S. 10° E., 49 French perches, along said Eslava's and Lalande's fence, to a red cedar picket marked M; at the southwest corner of Leland's fence to a red cedar picket marked M, at the southwest corner of Leland's lot, &c., as the boundaries of the Spanish titles to Price; which said tract of land has in part been reported by William Crawford, esq., late land commissioner, and, according to the act of Congress, is claimed in virtue of a Spanish grant executed by the Spanish Government in favor of Thomas Price, recorded in this office, in book C, pages 79, 80, and 81; and in virtue of a Spanish confirmation and order of survey, including the aforesaid conceded lands, by decree of the Intendant Morales, dated in Pensacola, 23d of September, 1806, and ordered to be surveyed by the Surveyor Genl. Pintado; and in virtue of the inhabitation and cultivation of the same, according to the Spanish usages and customs; all which will appear by the subjoined letter and the testimony adduced in support of the same.

WILLIAM E. KENNEDY.

MR. GOVERNOR GENERAL: Mr. Thomas Price, a subject of his Catholic majesty, residing in the town of Mobile, with due respect, represents unto you, that, being in want for his establishment, a strip or tract of land containing about fifteen hundred arpens, situate to the west of the said town of Mobile, bounded on the north by lands belonging to and occupied by Messrs. Forbes & Co., on the south by those of Simon Favre, on the east by the above mentioned town of Mobile, and on the west by lands claimed by the estate of the deceased Anthony Espego, as well as other grounds, situate in the eastern part of said town of Mobile, in front of Royal street; both of which tracts and pieces of ground being vacant, without having ever been occupied by any person whatever, and remaining until the present period the property of the king. He humbly prays that you will be pleased to grant them to him by title of sale; a favor which he expects to receive from the accustomed generosity of your excellency.

JOSHUA KENNEDY,
for Thomas Price.

Pensacola, 1st September, 1806. Let this be submitted to the inspection of the fiscal minister of the royal treasury.

DN. HEREDIA,
VINCENT IGNACIO RAMOS.

MORALES,
JUAN MORALES.

On the same day, month, and year, we, the assisting witnesses, notified Thomas Price of the preceding decree.

RAMOS.
MORALES.

On the above mentioned day, we imparted it to the fiscal minister of the royal treasury.

RAMOS.
MORALES.

The fiscal of the royal treasury, after the inspection he hath bestowed upon the application made by Thomas Price, an inhabitant of Mobile, soliciting, in virtue of a title of sale, the concession of a tract of land, containing about fifteen hundred arpens, situated to the west of the said town, saith, that, upon condition that the same be vacant, belonging to the royal domain, cause prejudice to no one, and that the petitioner possess the qualification of subject of his Catholic Majesty, which must be certified by the commandant of said town; it appears to the fiscal, that your lordship should adhere to the petition, by giving the competent order to the said commandant, that two appraisers may be named on the part of the royal treasury, and that two others may be chosen by the purchaser, who shall proceed in its valuation with the concurrence of the neighboring inhabitants, and of the surveyor, who has to verify the survey; which business being dispatched with due solemnity, shall be sent to this tribunal, in order that, in having verified the payment into the royal coffers, in the form prescribed by the regulations, the petitioner may be furnished with the competent titles. The tribunal will, nevertheless, resolve upon that which seems most agreeable to justice, which the fiscal requests.

JUAN FRANCO. ARMAND DE COURVILLE.

Pensacola, 2d September, 1806.

As it appears to the fiscal minister, let these proceedings be transmitted to the commandant and sub-delegates of Mobile, in order that the petitioner, he being a Spanish subject, may cause the boundaries of the land he claims to be marked out and surveyed by the surveyor-general or his deputy, and annexing to his proceedings the declaration of their being vacant, made in the ordinary form, and carrying the estimation or valuation into effect, in the manner prescribed by the fiscal minister, and taking the same steps with regard to the lot which is claimed by him at the same time, which shall be annexed to these proceedings, and the same referred to as early as possible.

DN. HEREDIA,
VINCENT IGNACIO RAMOS.

MORALES,
JUAN MORALES.

On the same day, we, the assisting witnesses, communicated to the fiscal of the royal treasury the preceding decree. We also notified Thomas Price.

"MORALES,"
"MORALES,"
"RAMOS."

Mr. Intendant General: Joshua Kennedy, attorney in fact of Thomas Price, with due respect, saith, that Mr. Price sent to him from Mobile, which he had presented to you, and by which he was authorized to obtain from your lordship the necessary titles for the tract of land specified in the petition presented on the first of this month, on which, by a decree made the second of the said month, appears the grant which your lordship made to him of land in the usual form. That at the time he presented it, said petition, he had merely received the above mentioned power, and was ignorant that Mr. Price had claimed the land he solicited. That a few days ago he received a letter of instruction from Mr. Price, with the grant made in his favor by Governor Gayoso, for six hundred arpens of the said land. A certified copy of which grant is hereto annexed, as also the certificate of seven respectable inhabitants, relating to, and concerning that part of the land which had been obtained from the heirs who had inherited the same, and who had possessed the same from the time [of] the French Government; and also to the loss of the French titles which were burnt; which certificates were translated and delivered to your lordship, together with that of the commandant of Mobile, which proved that Mr. Price was a Spanish citizen, that he was employed in the capacity of English interpreter for many years, and that he had received but little compensation for his services, which he represents under the instructions to have been received, and which have been submitted to your lordship. He represents, moreover, that there is a tract of land situated to the west and to the south of Mobile, including the land which Mr. Price claims, bounded on the north by the lands of John Forbes and Co.; on the east, by granted lots or lands, (terres) in the town of Mobile, and by the Mobile river; on the south, by the lands of Favre; and on the west, by lands claimed by the heirs of Anthony Espego, containing about two thousand arpens; and that in consideration for his services to the government, which appears by the certificate of the commandant of Mobile, and in consideration of what is above exposed, your lordship may deem it just and expedient to grant and to confirm the title of property of the said land, entreating you to order the bounds to be marked out, and the letter of property to be dispatched as early as possible; a favor that he will receive from the justice of your lordship. Pensacola, 22d September, 1806.

JOSHUA KENNEDY,
for Thomas Price.

The fiscal of the royal revenue, after the inspection which he has conferred upon the application presented by Don Thomas Price, an inhabitant of Mobile, soliciting the titles in form of a tract of land of about two thousand arpens, which he purchased from those who purchased from those who had obtained them from the French Government, which title with other papers were lost in a fire which happened in his house, saith, that with respect to the seven certificates which are translated in Spanish, and which appear in the proceedings, it is proved (seguistifaca) that the lands had been possessed before the

Spanish domination, and that he hath been continued in the possession thereof without opposition; it is the opinion of the fiscal, that since the persons who testify are inhabitants and residents of the town of Mobile, and the family of the petitioner also resided there, your lordship may grant his petition; survey and map, which has to be made by the surveyor, being first executed, according to which the extent of the land will be confirmed; and that the lordship may give the competent order to the commandant and sub-delegate of the above mentioned place, that he may dispatch this business with the assistance of two witnesses in due form of law, and with the concurrence of the neighboring inhabitants; and this being done, the proceedings shall be sent to this tribunal, that he may be provided with the title in form, in manner prescribed by the regulations. The tribunal will, nevertheless, do what it may think proper, which the fiscal requests. Pensacola, 23d September, 1806.

JUAN FRAN. ARMANDE CORVE'TTO.

Pensacola, 23d September, 1806.

Let these proceedings be sent to the commandant and sub-delegate of Mobile, that he may cause to be surveyed the tract of land and the boundaries thereof, to be marked out by the surveyor general, or his deputy, which is described in the petition of Thomas Price, in the manner pointed out by the fiscal minister, giving the information they may receive as to quality and quantity, of the possession, which is alleged, and their opinion thereon, and returning the result to us as early as possible, in order that we may, upon view thereof, do what to us may seem meet.

Assessed 16 reals or bitts.

DN. HEREDIA,
VINCENT IGNACIO RAMOS.

MORALES,
JUAN MORALES.

On the same day we, the assisting witnesses, communicated to the fiscal of the royal treasury the anterior decree.

MORALES,
RAMOS.

We also notified Thomas Price.

MORALES,
RAMOS.

Evidence.

Mr. Peter Hobart, being sworn, saith, that he was present, and witnessed a lease made by Thomas Price, the former interpreter of the English language, employed in the Spanish government, at this place, to John, a free man of color, who, under the control of Price, within the boundary of the aforesaid described tract of land, inhabited and cultivated the same; and that the said John was bound, by said lease, to build a house, dig a well, clear and fence five acres of land; and that

the said John, under and for the said Thomas Price, builded a house, dug a well, cleared and cultivated part of the land, and inhabited and cultivated the same for several years, (say four or five,) and that, after the removal of John, the said place was inhabited and cultivated under the control, and by, William E. Kennedy, and that the said place was inhabited and cultivated at least six years in succession previous to the year one thousand eight hundred and fourteen.

PETER H. HOBART.

Sworn before me, 28th Feb'y, 1820.

W. BARTON, *Register*.

Personally appeared before me, W. Barton, register of the land office at Jackson Court-house, James Innerarity, esq., who made oath that the several signatures attached to the titles of Thomas Price, now presented by claimant, Don William E. Kennedy, are genuine, particularly the signatures of the following officers of the Spanish government, viz., that of Morales, the intendant, that of Heredia, that of Juan Morales, an officer of the Cantadowa, that of Juan Fran. Armand de Couville, fiscal treasurer; that of Ramos, a clerk in the intendancy, sometimes signed Ramos, and sometimes Vincent Ignacio Ramos; that of Francis Maximo del Maxent, commandant of Mobile; that of Francis Canedo, secretary in the commandant's office; as was that of Juan Saez, signed as an assisting witness also; and that wherever, in the said documents presented by the said Kennedy, the signatures of any of the said officers appear, they are genuine.

JAMES INNERARITY.

Sworn to and subscribed, this 20th February, 1820.

W. BARTON, *Register*.

Diego McBoy, being duly sworn, deposeth that he is acquainted with the signatures particularly mentioned in the affidavit of James Innerarity, esq., and that they are genuine. DIEGO McBOY.

Sworn to and subscribed the 29th February, 1820.

W. BARTON *Register*.

The said Innerarity and McBoy further depose that they came to reside in Mobile, the former in the year 1807, and the latter in 1805. Deponent thinks that, in the year 1808 or 1809, several years before the Americans took possession of the country, some cabins were built, and ten or twelve acres of land were cleared, as deponents understood, by William E. Kennedy, within the limits of the tract claimed by said Kennedy under Price. The cabins were inhabited until after the Americans took possession of the country, and the cultivation of the land kept up by said Kennedy for several years, to the best of deponents' recollection. JAMES INNERARITY,
DIEGO McBOY.

Sworn to and subscribed this 29th February, 1820.

W. BARTON, *Reg*.

John Baptiste Francis personally appeared before, and, being duly sworn, deposeth that Thomas Price resided in a house situated between Fort Charlotte and the house of Don Miguel Eslava, in Mobile, about the year 1798, and for several thereafter. Further deponent saith not.

his
JOHN BAPTISTE ✕ TRENIER.
mark.

Sworn to and subscribed before me, 20th June, 1820.
W. BARTON, *Reg'r.*

Register of claims to land in the district east of Pearl river, in Louisiana, founded on complete grants and orders of survey derived from the Spanish authorities, which, from their circumstances, require a special report:

Number 3. By whom claimed, William E. Kennedy. Original claimant, Thomas Price. Nature of claim and from what authority derived, Spa. ord. survey. Date of claim, 18 Nov., 1798. Quantity claimed, front 20, dep. 30, area in arpens, 600. Where situated, adjoining Mobile. By whom issued, Gayoso. Surveyed, when, by whom, no survey. Cultivation and inhabitation, from to . Cult. and inh. 1798, and for several years thereafter; and from 1808 to 1814 by the present claimant.

No. 3. This claim was recommended for confirmation by the former commissioner, William Crawford, esq., as will appear by reference to report No. 6, claim 103; which report he was afterwards induced to allow, as appears by his letter dated the 23d Nov., 1816, annexed to the record of this claim, in consequence of his belief that it was fraudulent and ought to be rejected. Although we have received no instructions from the General Land Office concerning this claim, yet the intimation conveyed by the annexation of Mr. Crawford's letter was too strong to be disregarded, and we assumed the responsibility of refusing to grant a certificate of confirmation, and to consider the claim in the light of a rejected one, which might be revised and additional evidence adduced in its support. The claim hath [been] revived, and additional evidence adduced [in] its support, which amounts to full proof of its inhabitation and cultivation according to the Spanish regulations, and the claimant disavows that his grant does or ever was intended to include Fort Charlotte, or any of the public buildings. In order to obtain a full view of the merits of the claim, and more especially to ascertain whether it would actually encroach on the fort and the other public grounds and lots in Mobile, we have deemed it advisable to direct the principal deputy surveyor, Silas Dinsmore, esq., to make an accurate survey and plat of the said land, upon the return of which we will make a supplemental and full report of the claim, accompanied by our opinion of its justice and validity. Land office, Jackson C. House, July 11, 1820.

W. BARTON, *Reg.*
WM. BURNETT, *Rec'r,*
Attest: JNO. ELLIOTT, *Clerk.*

Report No. 10.

Supplemental report on the claim of William E. Kennedy, under Thomas Price, for six hundred arpens of land, adjoining the town of Mobile. Vide claim No. 3, report No. 8, of the register and receiver.

In our report on the above mentioned claim, we remarked that, in order to obtain a full view of its merits, and more especially to ascertain whether it would encroach on Fort Charlotte, and other public grounds in Mobile, we should direct the principal surveyor to make an accurate survey and plat of the same according to the Spanish title under which it is claimed. This survey has been executed, and a plat thereof returned to this office on the fifth instant, by which it appears that a great many lots which have been sold by the claimant, William E. Kennedy, and which *has* been improved and are occupied by purchasers, are not included in the survey; and that a considerable number of lots granted by the Spanish authorities previously to the real or pretended grant to Price, some of which are founded on complete grants, fall within the limits of the survey.

From a short examination of the archives of the commandancy of Mobile, no record appears of the order of survey to Price, under which Kennedy claims; but this fact is not conclusive that such a grant was not made, inasmuch as it is currently reported and credited that many of the papers of that office, which were left here at the capitulation of Mobile, are not now in the office. It certainly appears very extraordinary, that a subject having no stronger claims on the justice and munificence of this Government than Price, who was only Indian interpreter, should have received the enormous grant of six hundred arpens of land surrounding the town of Mobile, and embracing all the ungranted lots in the town. We cannot for a moment suppose that the true governor of Louisiana, Manuel Gayoso de Lemos, an officer who appears to have been extremely cautious in granting lands, could have intended to give away all the ungranted lots in the town of Mobile, and the whole of its suburbs. If the grant to Price be genuine, *and* it is reasonable to suppose that the governor was deceived by the information of the commandant as to the locality of the land intended to be granted.

From a deliberate view of all the facts and circumstances connected with this claim, we have strong reasons to suspect its validity. We cannot, therefore, recommend it to be confirmed by Congress.

W. BARTON, *Reg.*

Land Office, Jackson C. House, 29 Decem., 1820.

Report on the claim of William E. Kennedy, under Thomas Price, for six hundred arpens of land adjoining. Mobile, 12th July, 1823.

Land Office at Jackson C. House, Mississippi,
12th July, 1823.

SIR: We have the honor to transmit herewith the application of William E. Kennedy for a certificate of confirmation for his claim to a tract of land adjoining the city of Mobile, containing six hundred ar-

pens, under an order of survey granted by his excellency Manuel Gayoso de Lemos, governor general of Louisiana, to Thomas Price, English interpreter to the Spanish government at Mobile, dated the 18th November, 1798, in virtue of an alleged confirmation of the said claim, by the third section of the act of Congress, entitled "an act supplementary to the several acts for adjusting claims to land and establishing land offices in the district east of the Island of New Orleans, approved the 8th day of May, 1822.

The first section of the act referred to confirms or recognises, as valid and complete titles, &c., all the claims to land said to be derived from the British and Spanish authorities, reported to the commissioner of the General Land Office, by the *reporter* and receiver, under the authority of the act of 3d of March, 1819, entitled "an act for adjusting the claims to land, &c., in the district east of the Island of New Orleans," which are contained in their report, and which are in their opinion valid, agreeably to the laws, usages, and customs of the said government.

The second section confirms, in the same manner as if the titles had been completed, all the claims reported as aforesaid, founded on orders of survey regularly, permission to settle, or other written evidence of claims derived from the Spanish authorities, which ought, in the opinion of the register and receiver, to be confirmed.

The third section, under which it is alleged the claim in question is confirmed, blends the claims of every person or his or her legal representatives, whose claim is comprised in the Lisbon register of claims, reported as aforesaid, with the settlements of the persons embraced in the list of actual settlers, or their legal representatives, not having any written evidence of claim reported as aforesaid, and grants to each claimant, and to each settler, who appears by the said report, or by the said list, to have inhabited or cultivated the land claimed or settled on by him prior to 15th April, 1813, a tract not exceeding six hundred and forty acres as a donation; by comparing the phraseology of the first and second sections with that of the third, it would seem not to be necessary to a confirmation under the latter section, that a claim should have been reported for confirmation, by the commissioners, but only that the land claimed or settled on should have been inhabited or cultivated by the claimant or settler, or his or her legal representatives, on or before the 15th April, 1813. This opinion is strengthened by the consideration that under a different and adverse construction, this class of claimants, many of whom, from various causes incident to their peculiar situation, were unable to fulfil all the conditions of these grants, which were therefore reported against by the commissioners, would be placed in a worse situation than actual settlers without any title at all, which cannot be supposed to have been the intention of Congress. The object of Congress was, as it evidently appears to us by the provisions of this section, to place all claimants, in virtue of written evidence of claim derived from the Spanish government, who were actual settlers prior to the 15th April, 1813, on the same footing with actual settlers with the said per-

mission only of the Spanish authorities, and to grant to the former a donation in consideration, not of a claim, the validity of which they could not recognise, but of inhabitation or cultivation thereof without interpretation under the Spanish government.

The claim before us, however, does not appear to have been reported against by the commissioners for want of evidence of inhabitation or cultivation, nor in consequence of having been derived from the Spanish authorities after the right of Spain to grant land had ceased, nor from any defect in the form of the title, but from a suspicion that the grant had been surreptitiously obtained by misrepresentation or misinformation of the commandant, by which the governor general was deceived as to the magnitude of the grant.

To rebut this presumption it is now alleged by the claimant, and so the fact appears satisfactory to us, that at the time this grant was made to Thomas Price the town of Mobile was an unimportant village, a mere military post without wealth or trade, and the circumjacent lands of so little value as that the grant of them would neither tempt the cupidity of speculators nor prejudice the interest of the Crown; that other lands, of equal value and importance, laying both immediately above and below the town, were granted about the same time to others who had less claim on the justice and munificence of the Government than the claimant, who it is alleged had rendered important services as English interpreter, and as assistant agent among the Indians. But the merits of the claimant, nor the validity of his claim under the Spanish government, are not now subjects for investigation of the register and receiver; that duty has been performed by them, and their reports were before Congress, when this claim, among others, was passed upon by that body. The only act which now remains for them to perform in relation to this claim, is purely a ministerial one; it is simply to make out to, or withhold from, the claimant the certificate he demands, and in this they are ready to act as they shall be directed by the proper department. We have therefore to request your instructions thereupon.

We have the honor to be, very respectfully, sir, your obd't serv'ts,

W. BARTON, *Reg.*
G. B. DAMERON, *Rec.*

JOHN MCLEAN, esq.,
Com. Gen. Land Office, Washington City.

Note—See report (special) of the register and receiver No. 8, dated July 11th, 1820; also supplemental report No. 10, dated 29th December, 1820.

Application of Joshua Kennedy, agent and attorney in fact of William E. Kennedy, for a certificate of confirmation for the claim of William E. Kennedy, under Thos. Price, for a tract of land adjoining the town of Mobile.

To the register and receiver of the land office at Jackson court-house, Mississippi:

Gentlemen: You will be pleased take notice that I, Joshua Kennedy, agent and attorney in fact for William E. Kennedy, do hereby apply

for a certificate of confirmation for the claim of William E. Kennedy, under Thomas Price, for a tract of land adjoining the town of Mobile, containing six hundred arpens, claimed under the order of survey issued by his excellency Manuel Gayoso Lemos, governor of Louisiana, and dated the 18 Novem., 1798, which claim is contained in a special report No. 8, of the register and receiver, and distinguished in said report by the number three, in virtue of the confirmation of said claim, under the third section of the act of Congress, passed the 8th May, 1822, entitled an act supplementary to the act for adjusting the claims to land and establishing land offices in the district east of the Island of New Orleans.

(Signed) JOSHUA KENNEDY.

Jackson Court House, July 8th, 1823.

LAND OFFICE, *St. Stephen's, Ala., April 10th*, 1845.

I do hereby certify, that the annexed and foregoing transcript included in pages one to twenty-three, inclusive, has been correctly copied from the book of record of claims laid before and acted on by the commissioner, William Crawford, and the register and receiver, as the same is found in this office.

Witness my hand and seal, (private,) having no seal of office.

JAMES MAGOFFIN, [SEAL.]
Register.

To the register and receiver of the land office at Augusta, district of Jackson county.

GENTLEMEN: Please take notice that I, as present claimant, apply for a certificate of confirmation for the claim of William E. Kennedy, under Thomas Price, which claim is contained in the report of the commissioner, No. 3, and the evidence recorded in book C, page 79 to 84, and is for a tract of land containing about six hundred arpens, and claimed under a concession issued by his excellency Manuel Gayoso de Lemos, in virtue of the confirmation of said claim under the act of Congress passed the 3d of March, 1819.

Augusta, Mississippi, 6th November, 1826.

Signed, JOSHUA KENNEDY.

LAND OFFICE AT AUGUSTA,
District of Jackson county, 8th Nov., 1826.

SIR: You are hereby required to survey the claim of William E. Kennedy, under Thomas Price, in strict conformity to the concession, and the additional title to the said Thomas Price, according to the original grant, order, and transcript of the surveyor general of the Spanish government hereunto attached.

Given under our hands the day and date above written.

WILLIAM HOWZE, *Register.*
G. B. DAMERON, *Receiver.*

To JAMES P. TURNER, Esq.,
Principal Deputy Surveyor, Mobile.

[For plat, see original, page 106.]

Pursuant to an order of survey from the principal deputy surveyor of the land district east of the Island of New Orleans, and in conformity with an order made by the commissioner of the land office at Augusta, district of Jackson court-house, Mississippi, I have surveyed for Joshua Kennedy a tract of land, situated on or near the Mobile river, in the State of Alabama, being section No. , in township No. 4, range No. 1, west of the basis meridian, and bounded as follows:

Beginning at a post on Mobile river; thence west, 129.58 chains, to a post; thence south 2° east, 75 chains, to a post; a pine bears south 35° west, 1.00 chain; thence east, 125.50 chains, to a post, a pine bears north 74 west, 33 links; thence north, 11 chains, to a post; thence east, 5.00 chains, to a post; thence north 10° west, 26.50 chains, to a post; thence south 62° west, 7.90 chains, to a post; thence north 27.30 west, 21.28 chains, to a post; north 62 east, 8.12 chains, to a post; thence north 27.30 west, 2.09 chains, to a post; thence north 62 east, 15.62 chains, to a post; thence north 31 west, 8.64 chains, to the place of beginning, containing $9.71\frac{85}{100}$ acres, and having such shape, form, marks, natural and artificial, as are represented in the above plat and notes of reference, the 18th of November, 1826.

Signed, THOMAS BILBO,
Deputy Surveyor.

Examined, JAMES P. TURNER,
Principal Deputy Surveyor.

To the register and receiver, at Augusta, district of Jackson county.

GENTLEMEN: The undersigned, Joshua Kennedy, present claimant of a tract of land containing $971\frac{85}{100}$ acres, original claimant, Thomas Price, respectfully represents, that the original concession and notice of the additional and confirmatory title was given in to William Crawford, late land commissioner; that said commissioner reported favorably of the concession, and, after his office had expired, wrote an ex officio letter against said claim, asserting that, at the time he made the report, the claim appeared to be a valid one, and that he was not aware that the said claim took in Fort Charlotte, and most or all of the public buildings in and near Mobile; it will satisfactory appear that the assertions contained in said letter are unfounded and erroneous by reference to the surveys of the same made by James P. Turner, principal deputy surveyor, and to the original Spanish order and survey *and survey*, herewith presented; and also, by reference to claim No. 93, and survey of the same, recorded in evidence book C, page 7. Which tract of land is situated between the site of Fort Charlotte, all the public buildings under the Spanish government in Mobile, and my claim under Thomas Price; and the western line of the survey of the claim No.

93, report 6, evidence book C, from page 1 to 11, is bounded and calls for the eastern boundary of the Spanish survey of my claim under Thomas Price. Additional evidence in relation to said claim was given in to the register and receiver, Barton and Burnett, who made a report thereon, and is recorded in the book of reports, page 313; by reference to which report, and the evidence of James Innerarity and Diego McVoy, it will appear evident that the title is genuine, and the inhabitation and cultivation was made according to the Spanish usages and customs.

By reference to the report by Willoughby Barton, in the book of reports, page 325, and comparing that supplementary report with the supplementary report recorded in report book, page 330, and with the statement of Mr Barton, late register, hereunto annexed, and by comparing the survey by Col. Dinsmore, the late principal deputy surveyor, made under a report, and an order of Barton and Barnett, with the survey returned by James P. Turner, a duplicate of which is hereunto attached, and with the original Spanish survey now before you, it will appear that said report was made by W. Barton from erroneous impressions, and is so acknowledged in the supplemental report, page 330, and the annexed statement of W. Barton, late register; and that the survey made and returned by Silas Dinsmore, the other principal deputy surveyor, is evidently incorrect.

All of the above facts go to prove that the late commissioner and the late register and receiver, acting as commissioners, have been under erroneous impressions in relation to this claim, and the same is a genuine and valid claim, according to the usages and customs of the Spanish Government. He therefore solicits the favor that the whole title, together with the survey of the same returned by James P. Turner, principal deputy surveyor, and the whole of the evidence in relation to this claim, may be examined by you; and if, in your [judgment,] the claim aforesaid be confirmed, to issue the certificate of confirmation for the same, or to make, in place of the supplemental report, which is in effect no report, (recorded in the book of reports, page 325, made by Mr. Barton, late register,) such a report, or supplemental report, as to you may be deemed equitable and just.

Signed, JOSHUA KENNEDY.

Augusta, 25th December, 1826.

LAND OFFICE, ST. STEPHEN'S, ALA., *April* 10, 1845.

I do hereby certify, that the annexed and foregoing transcript, embraced in page one to six inclusive, is a correct copy from the book of records of claims laid *laid* before and acted on by the register and receiver, acting as commissioners, as the same is found in this office.

Witness my hand and private seal, having no seal of office.

Signed, JAMES MAGOFFIN, [SEAL.]
Register.

Report on the claim of Joshua Kennedy, under Thomas Price, for nine hundred and seventy-one $\frac{85}{100}$ acres of land adjoining Mobile, 27th December, 1826.

LAND OFFICE AT AUGUSTA,

District of Jackson county, Mississippi, Dec. 27, 1826.

SIR: In consequence of the application of Joshua Kennedy, as the legal representative of Wm. E. Kennedy, for a certificate of confirmation on claim No. 103, hereto attached, we have caused the survey of said claim to be made in strict conformity to the original title; and from a careful examination of the several references made by him on his first and second application, hereto attached, and from all the testimony on the subject of this claim, recorded in this office, we are of opinion that the claim is entitled to confirmation, and ought to be confirmed, for nine hundred and seventy one $\frac{85}{100}$ acres, according to the survey of the same returned by James P. Turner, principal deputy surveyor, recorded in this office. It is manifest, from the survey returned by Mr. Turner, and from the evidence before us, that the claim has been fairly obtained and granted in good faith by the Spanish Government, and that the inhabitation and cultivation has been made according to the usages and customs of said Government, and does not interfere with the public grounds of Charlotte, as stated in supplementary reports against the claim. And in compliance with the wish of the applicant, we beg leave to submit the subject for your consideration, and await your instructions, or such other disposition as you may deem expedient.

Very respectfully, your most obedient servant,

WM. HOUZE, *Register*.
G. B. DAMERON, *Receiver*.

GEORGE GRAHAM, ESQ.,
Commissioner General Land Office, Washington City.

Note. The several papers referred to in the above report, as recorded in the book of evidence of the register and receiver, pages 207 to 210.

LAND OFFICE, ST. STEPHEN'S, ALA., *April* 10, 1845.

I do hereby certify, that the annexed and foregoing report of Messrs. Houze and Dameron is a correct copy from the book of reports of the commissioners and register and receiver, as the same is found in this office.

Witness my hand and private seal, having no seal of office.

JAMES MAGOFFIN, [SEAL.]
Register.

Exhibit—Deed from Thomas Price to William E. Kennedy, produced by defendant under notice.

This deed of sale, made the sixth day of June, in the year of our Lord one thousand eight hundred and ten, by and between Thomas Price, of Mobile, in West Florida, of the first part, and William E. Kennedy, of the same place, of the second part, witnesseth: That whereas the said Thomas Price conveyed, on or about the twenty-second

day of November, in the year eighteen hundred and six, all that tract of land granted to him by the Intendant Morales in month of September, eighteen hundred and six, to the said William E. Kennedy, excepting ten acres in the northwestern corner of said concession of land; and whereas, in or about the month of August, in the year eighteen hundred and seven, the said Thomas Price, in and for the consideration of five hundred dollars, to him paid by the party of the second part, in the commandant's office, sold and conveyed to the said William E. Kennedy all that tract of land granted to him by Governor Manuel Gayoso de Lemos, the eighteenth of November, seventeen hundred and ninety-eight, and confirmed to him by Colonel Maxent the twenty-fifth of November, in the year eighteen hundred and six; and whereas it now appears, or is supposed, that said deed of sale is lost, mislaid, and missing from the archives, or has been removed to the intendant's office at Pensacola: Therefore, it is now mutually covenanted and agreed, to, by, and between the contracting parties, that in case the said deed of sale, made and executed before the Commandant Maxent, should be found, then, and in that case, the said party of the second part, his heirs, executors, or administrators, for and in lieu of the ten acres of land reserved by said Price in the conveyance made by him, on the twenty-second of November, 1806, to said Kennedy, and in full satisfaction and compensation of all reserves, contracts, and agreements, heretofore made by and between the said parties, is bound to convey to said Thomas Price, his heirs or assigns, ten superficial acres of land out of the said six hundred arpens, granted by Governor Emanuel Gayoso de Lemos to said Price, and conveyed to him, the said William E. Kennedy, as aforesaid; and which ten acres of land shall begin at a point on the southern boundary line of Poplar Grove tract of land, claimed by John Forbes & Co., where a line continued northerly from the western side of St. Joseph street, and the same course of said street, may intersect John Forbes & Co.'s southern boundary line; thence from said point to run so far west, and also so far southerly the same course of the western side of St. Joseph street, to points, as that two other lines parallel to the said mentioned lines of equal length will make the quantity of ten superficial acres, and to include the field, house, and well made by said Price; with which described ten acres of land, and satisfactory considerations heretofore received by him, he, the said Thomas Price, does hereby acknowledge to be satisfied, compensated, paid, and content for all reserves, contracts, and agreements heretofore made by and between the said contracting parties.

Now, this deed of sale witnesseth, that the said Thomas Price, the party of the first part, in execution of the premises, and for and in consideration of the sum of seven hundred dollars to him in hand paid by the said William E. Kennedy at and before the signing, sealing, and delivery hereof, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, released, and forever quit-claimed, and by these presents doth grant, bargain, alien, sell, release, and quit-claim, unto the said William E. Kennedy, his heirs and assigns, for-

ever, all that certain piece, parcel, or tract of land, containing about eleven hundred arpens, bounded northerly by a tract of land now claimed by John Forbes & Co., called Poplar Grove, and by lands claimed by William Fisher; westerly, by lands granted to Antony Espejho; southerly, by lands granted [to] Simon Favre; easterly, by lands to Francis Collell, and also to William McVoy; and by lots on the western part of the town of Mobile, occupied and possessed by Charles Le Long and Benjamin De Brocar, and by the Mobile river; and having such shape, form, and marks, as will more fully appear by reference to the concession of Colonel Francis Maximo. de V. Maxent, dated Mobile, the twenty-fifth November, eighteen hundred and six, granting and confirming the said lands to the said Thomas Price; and it is hereby covenanted and agreed upon, by and between the said contracting parties, that he, the said Thomas Price, his heirs, executors, or administrators, shall and will, for the aforesaid consideration, at any time hereafter, when requested, convey before the commandant, or any other competent authority, unto the said William E. Kennedy, his heirs and assigns, forever, as may be by him required or requested, the said piece, parcels, or tracts of lands above described, reserving and excepting therefrom only the aforesaid described ten superficial acres; and also that any want of form in this conveyance, and it not being signed and executed before the commandant, shall not impair or invalidate the same; and also that this deed shall be good and valid in law; together with all and singular the rights, titles, privileges, and appurtenances, thereunto belonging, excepting the ten superficial acres heretofore described and excepted therefrom. To have and to hold the said piece, parcel, and tracts of land, containing about eleven hundred arpens, bounded, granted, and confirmed by Colonel Maxent, as afore described, and all and singular other the premises hereinbefore granted and conveyed, with the appurtenances to the same belonging, (except as before excepted,) unto the said party of the second part, his heirs and assigns, forever.

In witness whereof I have hereunto set my hand and seal, the day and year first above on the other side written.

Signed, THOMAS PRICE. [SEAL.]

Signed, sealed, and delivered, in presence of—
LEWIS SEWALL,
LEON NICOLAS.

STATE OF ALABAMA, *county of Mobile:*

Personally appeared before me, John Rolston, a notary public, duly commissioned and qualified, in and for said county, the above named Lewis Sewall, one of the subscribing witnesses to the foregoing deed, who, being duly sworn, deposeth and saith, that he saw the above named Thomas Price, whose name is subscribed thereto, sign, seal, and deliver the same to the said William E. Kennedy; that he, this deponent, subscribed his name as a witness thereto, in the presence of the said Thomas Price, and that he saw the other subscribing witness,

Leon Nicolas, sign the same in the presence of the said Thomas Price, and in presence of each other, on the day and year therein named.

Subscribed and sworn to before me, this twenty-ninth day of September, in the year of our Lord one thousand eight hundred and thirty-six.

LEWIS SEWALL.
JOHN ROLSTON, *Notary Public.*

Given under my hand and notarial seal, this twenty-ninth day of September, A. D. eighteen hundred and thirty-six.

[L. S.] Signed, JOHN ROLSTON, *Notary Public.*

THE STATE OF ALABAMA, *Mobile county, ss:*

I, Henry Lewis, clerk of the county court of said county, certify the foregoing to be a true copy of the deed from Thomas Price to William E. Kennedy, as it purports to be, as the same is recorded in book S of deeds and conveyances in my said office.

Given under my hand and seal of office, this 13th day of January, A. D. 1837.

[L. S.] Signed, H. LEWIS, *Clerk.*

GENERAL LAND OFFICE, *March 28th*, 1838.

I hereby certify, that the foregoing, on pages 1, 2, 3, 4, and 5, is a true copy of the paper on file in this office.

In testimony whereof I have hereunto subscribed my name, and caused the seal of the office to be affixed, at the city of Washington, the day and year above written.

JAMES WHITCOMB, *Commissioner.*

Exhibit—Price claim.

The United States of America, to all to whom these presents shall come, greeting:

Whereas there has been deposited in the General Land Office a certificate, numbered one, of the register and receiver of the land office at St. Stephen's, and a plat of survey of the tract of land therein mentioned, under the provisions of the act of Congress, approved on the third day of March, one thousand eight hundred and twenty-seven, entitled "An act supplementary to the several acts providing for the adjustment of land claims in the State of Alabama," whereby it appears that by the second section of the act of Congress, approved on the second day of March, one thousand eight hundred and twenty-nine, entitled "An act confirming the reports of the register and receiver of the land office for the district of St. Stephen's, in the State of Alabama, and for other purposes," the claim of Joshua Kennedy, and the other legal representative or representatives of Thomas Price, entered in the reports of the said register and receiver as special report, numbered one, was confirmed, and has been surveyed as being bounded and described as follows, to wit:

Beginning on the north boundary of the claim of Simon Favre, at picket N, being the southwest corner of Francis Collell's claim; thence

north seven degrees east, eleven chains and three links, to picket A; thence south eighty-two degrees east, ..ve chains and seventy-five links, to picket T; thence north four degrees west, twenty-eight chains and fifty links, to picket H; the southwest angle of the Presbyterian church bearing north seventy-six degrees thirty minutes east, thirteen links; thence south sixty-nine degrees west, seven chains and seventy-four links; thence north twenty degrees west, along the west line of Joakim street, twenty-one chains and eleven links, to the northwest corner of the lot granted to Benjamin Dubroca, as called for in the grant to Price; thence north sixty-nine degrees forty-five minutes east, eight chains and fifty three links; thence north twenty degrees west, two chains and sixty-six links, to the south boundary of St. Louis street; thence north sixty-nine degrees forty-five minutes east, fifteen chains and forty-four links, to the ancient margin of the river Mobile, being thirty-four and a half links west of the southwest angle of St. Louis and Water streets; thence north thirty-six degrees west, nine chains and seventy-six links, to the southeast corner of the Orange grove tract granted to John Forbes and Company; thence north eighty-two degrees west, fifty-nine chains and eighty-six links, to the Bayou Marmotte; thence with the meanders of the bayou south twelve degrees west, ten chains, south six degrees thirty minutes west, three chains and seven links, to the southeast corner of William Fisher's claim; thence north sixty degrees west, sixty-eight chains and sixty-eight links, to the east boundary of Antonio Espejo's claim; thence south six degrees forty-five minutes west, eighty-seven chains and thirty links; thence south eighty-two degrees east, one hundred and twenty-six chains and fifty-two links, to the place of beginning, containing nine hundred and twenty-one acres and forty-two hundredths of an acre, and being designated as section forty, in township four south, of range one west, in the district of lands subject to sale at St. Stephen's, Alabama.

Now, know ye, that the United States of America, in consideration of the premises, and in conformity with said acts of Congress, have remised, released, and forever quit-claimed, and by these presents do remise, release, and forever quit-claim, unto the said Joshua Kennedy, and the other legal representative or representatives of Thomas Price, and to their heirs, the said land above described, subject to any just claim or claims to all and every part thereof, of all and every person or persons, bodies politic or corporate, derived from the United States, or from either the British, French, or Spanish authorities, and particularly excepting from the operation of this conveyance the claims of John Forbes and Company, certificates one, twenty-two, and twenty-three, of William E. Kennedy, certificate forty-two, of James Innerarity, certificate number three, of T. H. Hobart, certificate thirty-six, of T. Nicolas, certificate three, of M. Rouis, certificates four and twenty-five, of L. Spalding, certificate forty-five, of P. H. Hobart, certificate thirty-five, of Victor Ginnard, certificate fifty-one, of Leon Nicolas, certificate number four, of Silo Nicolas, certificate five, of M. Robeshow, certifi-

cate twenty-two, of F. Frenier, certificate sixty-six, of Ann Surtell, certificates twenty-seven, twenty-eight, and twenty-nine, and the surveys for the heirs of Samuel Mimms, for J. B. Toulmin, for Jesse Embree, the Church of the Holy Conception, and for Lefroy Dolive, so far as the same may, either under the French, Spanish, British, or American Governments, be better than the legal claim of the said Joshua Kennedy, and the other legal representative or representatives of Thomas Price, and no further.

To have and to hold the same, together with all the rights, privileges, immunities, and appurtenances, of whatsoever nature thereunto belonging, subject to any just claim or claims as aforesaid, unto them, the said Joshua Kennedy, and the other legal representative or representatives of Thomas Price, and to their heirs and assigns, forever; so that neither the United States, nor any other person claiming under them, except as is provided in said acts, and the reservations and exceptions aforesaid, may or can set up any right or title thereto.

In testimony whereof I, Martin Van Buren, President of the United States of America, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand, at the city of Washington, this first day of May, in the year of our Lord one thousand eight hundred
[L. S.] and thirty-seven, and of the independence of the United States the sixty-first.

By the President: MARTIN VAN BUREN.

By A. VAN BUREN, *Sec'ry.*

SAMUEL D. KING,
Acting Recorder of the General Land Office ad interim.

GENERAL LAND OFFICE.

I, Thomas H. Blake, Commissioner of the General Land Office, do hereby certify, that the foregoing, on pages 1, 2, 3, and 4, is a true copy from the record of this office, vol. L, pages 7, 8, 9, 10, and 11.

In testimony whereof I have hereunto subscribed my name, and caused the seal of this office to be affixed, at the city of Washington, this 1st day of November, one thousand eight hundred and forty-two.

THOMAS H. BLAKE, *Commissioner.*

Will of Joshua Kennedy.

I, Joshua Kennedy, of the city of Mobile, do make, publish, and declare this my last will and testament, as follows:

First. I do hereby revoke, annul, and make void, all former wills, codicils, and testamentary depositions whatsoever, by me made, and declare this to be my sole true will and testament: Provided, however, that the revocation shall not extend to, or be construed to impair or destroy the force and effect of divers deeds of gift of lands by me lately made to my wife, to my children, nephews, nieces, and others, but the same are hereby recognised; and it is my will and desire that they shall

be available and effectual in the manner therein provided, and according to the particular instructions given in relation to them by me.

Second. I do hereby nominate and appoint my friends, William R. Hallett and Robert L. Walker, of Mobile, executors of this my last will and testament, and do request that they will take upon themselves the burthen of the execution of the same.

Third. I do hereby authorize and empower my said executors, William R. Hallett and Robert L. Walker, to claim, demand, take into their possession, to have, keep, and to hold, for the benefit of my estate, the whole of my property, real as well as personal, and to collect all debts and demands due me, from whatsoever source, and realize the same, or so much as shall be necessary. And further, I do give them full power and authority to sell all my property, which they may think proper to sell, for the interest of my estate, and for its good management, whether it be real or personal property. Also, to lease all lands, or other property, to improve my real estate, by erecting buildings or other improvements, or improve the property of my children in such manner as they may judge most beneficial, and for the best interests of all concerned, to exchange, to settle, to arbitrate, to compromise doubtful claims, to make all contracts, to manage, control, and direct, to receive all rents and profits, to invest all moneys, to pay all moneys and expenses, and to do all acts which shall, in their discretion and good judgment, be best to be done for the interest of my estate towards the safe, best, and most profitable management of my lands and effects, to the end that the same may be made to yield, and be made more valuable to my family, in the same manner as I could myself manage, control, and dispose of the same, if living. And I do hereby constitute my said executors trustees, with full power to carry into effect the purposes aforesaid, and give them power to execute all conveyances of lands and other instruments which may be necessary to carry my intentions fully into effect.

Fourth. It is my will and desire that my said executors shall, out of my property and effects, rights and credits, raise such sums as be necessary to pay all debts and lawful demands, which debts and demands I desire shall be paid. And also to pay the several special legacies hereafter mentioned, and to carry into effect the several dispositions in this will mentioned.

Fifth. I do give, leave, and bequeath, to my brother, Maxfield Kennedy, residing near Tuscaloosa, the sum of one thousand dollars, to be paid by my said executors.

Sixth. I do give, leave, and bequeath to my nephew, Franklin Kennedy, the son of my late brother, Josiah Kennedy, the sum of one thousand dollars, to be paid to him by my said executors.

Seventh. I give, leave, and bequeath to my nephew, Josiah Kennedy, the son of my late brother, Josiah Kennedy, deceased, the sum of one thousand dollars, to be paid to him by my said executors.

Eighth. I do give, leave, and bequeath to Mrs. Sarah Phepps,

widow, the sum of one thousand dollars, to be paid to her by my said executors.

Ninth. I do give, leave, and bequeath to Mrs. Louisa Allen, the wife of Mr. Allen, and the daughter of Mrs. Sarah Phepps above mentioned, the sum of five thousand dollars, to be paid to her if single, or to trustees for her if covert; it being my intention that this legacy shall be for her sole and separate use, independent of the control of her husband, or of any right whatever in him.

Tenth. In consideration of the care and attention, and the faithful services, of my mulatto slave girl named Mary Ann, during my long illness, it is my will and desire that she be emancipated, and to that effect I direct my said executors to cause her to be conveyed and sent to the city of Philadelphia, and there set at liberty; and further, that when there they do pay to her the sum of five thousand dollars. And I do hereby give, leave, and bequeath to her that sum, and desire that the same be paid to her when liberated.

Eleventh. I do hereby nominate and appoint my said friends, William R. Hallett and Robert L. Walker, to be the guardians of my five children, Seclusa, Mary, Joshua, Clarisa, and Augusta, until they shall be of lawful age, respectively.

Twelfth. It is my will and desire that my said executors shall, out of the proceeds of my estate, and the incomes thereof, after paying all debts, provide a suitable maintenance for my wife, Susan Kennedy, and my five children, and for the education of my son Joshua, and my daughters, Clarisa and Augusta, until my estate shall be distributed, as hereinafter mentioned. And I desire my said executors to appropriate a reasonable sum sufficient for the purposes aforesaid, from time to time, in favor of such of said persons, my said wife and children, out of the mass of my estate, till distributed. I desire my said three younger children, Joshua, Clarissa, and Augusta, to be well educated, and that they be sent to New Haven, or some other suitable place in some of the northern States, and there be well educated.

Thirteenth. It is my will and desire that my estate be managed, improved, and kept together until my son Joshua shall attain the age of twenty-one years, if he shall live to attain that age, and if not, then till my youngest child shall attain full age; and that then my said executors shall make a full distribution of which shall then appertain to my said estate, lands, debts, moneys, improvements, effects, rights, and credits, and of all the increase remaining unexpended; and the same I do leave, bequeath, give, and devise as follows, viz: To my daughter Seclusa Kenedy, one equal fifth part of all my whole estate then remaining. To my daughter Mary Kenedy, one equal fifth part of my whole estate then remaining. To my son Joshua Kenedy, one equal fifth part of my whole estate then remaining. To my daughter Clarissa Kennedy, one equal fifth part of my whole estate then remaining. To my daughter Augusta Kennedy, one equal fifth part of my whole estate then remaining.

Fourteenth. Having endorsed and made notes, which have been

discounted in bank, as well for my own account as for the benefit of my friends, I do hereby authorize my said executors, when they shall think proper, to make new notes or new endorsements as required by said banks for the renewal and gradual reduction of said notes, until the same be finally paid by the proper parties, but for this purpose only.

All which dispositions of my estate, as above set forth, I desire to be carried into effect and execution, according to their true intent and meaning, after my decease.

In testimony whereof, I have hereunto set my hand and seal, at Mobile, this thirteenth day of December, in the year of our Lord eighteen hundred and thirty-eight, in presence of witnesses.

JOSHUA KENEDY. [SEAL.]

Signed and declared by Joshua Kennedy, as his last will and testament, in our presence, on the day of the date thereof; whereupon we have signed the same as witnesses in his presence, and presence of each other.

WM. KITCHEN,
WM. W. RANDALL,
J. HAMILTON HASTIE,
JESSE CARTER,
GEO. W. STEWART.

THE STATE OF ALABAMA, *Mobile county:*

Personally appeared before me, John F. Everett, judge of the county court of Mobile county, on the 22d day of December, 1838, Geo. N. Stewart, who being duly sworn deposeth and saith, that during the last illness of Joshua Kenedy, he, this affiant, was frequently in attendance on him; that said Kenedy did, from time to time, advise with this affiant, who was his standing counsel, as to a disposition of his affairs after his decease, and caused this affiant to prepare divers deeds of gift to divers persons; and stated to this affiant that, after said deeds were executed, he desired to make his last will and testament, for which he would give instructions. That on the 13th of December, 1838, at the house of said Kenedy, he, the said Kenedy, desired this affiant to receive instructions for the *for the* drawing of his will, and desired all other persons to leave the room. That after they had withdrawn said Joshua Kenedy did give his particular instructions to this affiant, who did set by his bed side, and took a memorandum in writing, as given, asking such questions in explanation as were necessary to draw it out in form; that these instructions were given with deliberation and accuracy, carefully noted by this affiant. That after they were given *and* received, this affiant withdrew to another room in the house, and drew off the said will according to the instructions given to him in every particular; that after the same was done, this affiant informed Mr. Kenedy that the will was ready. That then said Kenedy again desired all persons to withdraw from the room, except this affiant, and desired this affiant to read the will over to him as written; which this affiant did, truly, carefully, and slowly, stopping from time to time to consider and explain,

and occasionally reading over some particular parts. That said Kenedy said it was right, except the form of the preamble, to which said Kenedy objected. That then this affiant wrote over again the first page, copying every thing exactly as written, except the preamble, which this affiant wrote in words as described by said Kenedy. That during the time this affiant was writing over the first page, said Kenedy had in his hands the other pages, and when it was completed he again read the new copy to said Kenedy, and asked him if he wished it to be all read over again, to which he said no ; that it was all now right, except one name, which was Franklin instead of Joseph ; this being corrected by an interlineation and erased, he said it was right, and that he would sign it, and directed that persons should be called to attest it, which was done. He mentioned to this affiant that it was unnecessary to read the will over in the presence of the witnesses ; that his declaration that it was his will and signature, and their attestation, would be sufficient, as he believed, and asked this affiant if he concurred with him in opinion on this point; to which this affiant answered that he did. That afterwards the subscribing witnesses being called, the said will was signed by Joshua Kenedy in the presence of this affiant, and of Wm. Kitchen, Jesse Carter, J. Hamilton Hastie, and William Randall. That this affiant subscribed the same, as did each of the said persons in the presence of each other. That this affiant sealed up said will in a packet, and superscribed said packet, and requested said Kenedy to say in whose hands he wished it deposited, and received for answer that Mr. Hallett was the person. That this affiant then inserted the name of Mr. Hallett in the superscription. That after it was sealed up by this affiant, in the presence of said Kenedy and said witnesses, it was handed to said Kenedy, who signed the superscription in the presence of said witnesses. That Mr. Hallet was sent for, he being in another room ; when he came the said Joshua Kenedy handed to him the said packet containing the will with his own hand, in presence of this affiant and of said witnesses. This affiant further saith, that the will now produced by William R. Hallett is the same, and that it is in the same condition as when executed, and this affiant knows of no other testamentary disposition made by said Kenedy, after the making of said will, till the time of his death.

GEORGE N. STEWART.

Sworn to before me, 29th Dec'r, 1838.

JOHN F. EVERITT, *Judge,*
County court, Mobile county.

THE STATE OF ALABAMA, *Mobile county:*

The deposition of the undersigned subscribing witnesses of the will of Joshua Kenedy, deceased.

We, the undersigned, being solemnly sworn, depose and say, that on the thirteenth day of December, 1838, we were called upon to attest, as subscribing witnesses, the last will of Joshua Kennedy; that we did, at his house, in Mobile, see him on that day sign the same with his own hand; and that we did, at his request, sign the same as subscribing wit-

nesses in the presence of said Kennedy and in the presence of each other, that is to say, of William Kitchen, William W. Randall, J. Hamilton Hastie, Jesse Carter, and George N. Stewart, besides other persons present. That we did not see said Kennedy read said will, it having been prepared before we were called in to attest it, nor did we hear it read to him; that after the said will was signed, it was sealed up in an envelope by George N. Stewart, in the presence of said Kennedy, and superscribed by said Stewart and handed to said Joshua Kennedy, who, with his own hand, subscribed the superscription in our presence, and with his own hand delivered the packet to William R. Hallett, in our presence, as his last will. That the will now produced, and subscribed by us, is the same one; and also the envelope or superscription. And we further depose and say, the said Kennedy was, in our opinion, at the time of making said will, of sound mind and memory, and capable of making a will; and that he died on the 20th, and was buried on the 21st of December, 1838, and that we know of no revocation of said will, and no fact or circumstance tending to impair or revoke the same.

WM KITCHEN,
JESSE CARTER,
J. HAMILTON HASTIE,
WM. W. RANDALL.

Sworn to in open court, 22d Dec'r, 1838.

JOHN F. EVERITT.

THE STATE OF ALABAMA, *Mobile county:*

Personally appeared before me, John F. Everitt, judge of the county court of Mobile county, William R. Hallett, who being duly sworn, deposeth and saith, that on the 13th of December, 1838, Joshua Kennedy, now deceased, did, with his own hand, deliver to him, said affiant, the packet now produced and sealed up, containing the will as *now* produced; that the same has been kept by this affiant ever since, and is now produced in the same situation as received. That he believes the same to be the last will and testament of said Joshua Kennedy, and knows of no other will, or revocation of said will, and of no fact or circumstance tending to impair the same, but believes the same to be truly the last will and testament of Joshua Kennedy, deceased, as now produced; and that said Kennedy died on the 20th of December, 1838.

W. R. HALLETT.

Sworn to in open court, before me, 22d Dec'r, 1838.

JOHN F. EVERITT.

Be it remembered, that heretofore, to wit, at an orphan's court begun and held in and for the county of Mobile, State of Alabama, at the court house of said county, in the city of Mobile, on the day of December, in the year of our Lord one thousand eight hundred and thirty-eight. Present: the honorable John F. Everitt, judge; the following proceedings were had, to wit:

THE STATE OF ALABAMA, *Mobile county:*

To the honorable the judge of the county court of Mobile county.

The petition of William R. Hallet, unto your honor, respectfully sheweth, that Joshua Kennedy, late of Mobile, died on the 20th of December, 1838, in Mobile. That he left a last will and testament, now here produced and submitted, with the proofs of its execution. That said Kennedy appointed this petitioner and Robert L. Walker his executors; wherefore they pray that letters testamentary may issue, &c.

WM. R. HALLETT.

I, Susan Kennedy, widow and relict of Joshua Kennedy, deceased, late of Mobile, do hereby waive the necessity of a citation for the probate of the will within mentioned, and agree that the same may be admitted to probate, having no cause to show against the same.

SUSAN KENNEDY.

Witness—WILLIAM BROOKS.

THE STATE OF ALABAMA, *Mobile county:*

Be it remembered, that the above named Susan Kennedy appeared personally before me, William Brooks, a notary public in and for said county, duly commissioned and sworn, and acknowledged that she signed and delivered the foregoing instrument, in writing, on the day and year, and for the uses and purposes therein mentioned.

Given under my hand and seal, this twenty-ninth day of December, A. D. 1838.

WILLIAM BROOKS, *Notary Public.*

ORPHAN'S COURT, *Mobile county, Dec. 29th,*

This day came William R. Hallett, and produced a will and testament of Joshua Kennedy, deceased; and also came George N. Stewart, William Kitchen, Jesse Carter, J. Hamilton Hastie, and William D. Randall, the subscribing witnesses to the said will, who made their depositions as to the genuineness of said will; and also the affidavit of the said Hallett being produced, and the said Hallett having also filed his own affidavit, and having produced the relinquishment of Susan Kennedy, widow, of her right of administration, it seems to the court, that said instrument is fully proved as the last will of Joshua Kennedy, deceased, and the same is therefore ordered to be recorded as such, together with the said affidavits and consent in writing of the said widow. And, therefore, the said William R. Hallett prays that letters testamentary be granted to him on said estate; and the said William R. Hallett having given bond in the penal sum of one hundred thousand dollars, with Lewis Judson and John Gayle as his securities, which bond is accepted and approved, and the said William R. Hallett having taken the oath required by law, as the executor of the said estate of Joshua Kennedy, it is ordered that letters testamentary do issue to him as executor of said estate, authorizing him to have and exercise all the powers as such to him given by law and by virtue of the provisions of said will; all which is ordered to be entered of record.

JOHN F. EVERITT.

And afterwards, to wit, at an orphan's court, begun and held in and for Mobile county, State of Alabama, at the court-house of said county, in the city of Mobile, on the second day of January, in the year of our Lord one thousand eight hundred and thirty-nine: present, the honorable John F. Everitt, judge, the following proceedings were had, to wit:

ORPHAN'S COURT, *Mobile county, Jan. 2d*, 1839.

This day came Robert L. Walker, named as an executor in the last will and testament of Joshua Kennedy, deceased, and applies for letters testamentary on said estate; which is granted on his entering into bond, with security, in the sum of one hundred thousand dollars, conditioned for the faithful performance of the trust. It is further ordered, that William F. Cleveland, William Kitchen, and Susan Kennedy, be accepted as his securities in said bond.

THE STATE OF ALABAMA, *Mobile county:*

I, Drury Thompson, clerk of the county court of Mobile county, State of Alabama, do hereby certify, that the foregoing twelve pages contain a true and correct transcript of the will of Joshua Kennedy, deceased, and of the probate of the same in the orphan's court of Mobile county, and the orders of said court, granting letters testamentary on the estate of Joshua Kennedy, deceased, to William R. Hallett and Robert L. Walker, as the same remain on file and of record in my office.

In testimony whereof I have hereto affixed my name and the seal of my office, at office, this the sixth day of April, A. D. 1846.

Attest: D. THOMPSON, *Clerk.*

Deed from Alexander Baudain to William E. Kennedy.

Know all men by these presents, that I, Alexander Baudain, in consideration of the sum of two hundred and fifty dollars, to me in hand paid by William E. Kennedy, of Mobile, the receipt whereof I do hereby acknowledge, have bargained, sold, and forever quit-claimed, unto the said William E. Kennedy, his heirs and assigns, forever, all that lot situate on the northeast corner of Mobile, fronting on the east side of Royal street, fifty perches, and extending back east to the river Mobile, bounded on the north side by land belonging to John Forbes & Co.; on the east side by the river Mobile; on the south side by St. John's street; on the west side by Royal street, as will more fully appear by reference to the original grant of the same to me from Governor Gayoso de Lemos, dated in New Orleans, in the year one thousand seven hundred and ninety-eight. To have and to hold the same, together with all and singular the privileges and appurtenances thereunto belonging, to the said William E. Kennedy, his heirs and assigns, forever.

Signed, sealed, and delivered in the town of Mobile, this twenty-second day of April, in the year one thousand eight hundred and fourteen.

ALEXANDER BAUDAIN. [SEAL.]

MISSISSIPPI TERRITORY, *Mobile county:*

Personally appeared before me, Louis Dolives, esquire, a justice of the quorum of said county, the before mentioned Alexander Baudain, who acknowledged that he signed, sealed, and delivered the foregoing deed on the day and year therein mentioned to the aforesaid William E. Kennedy.

Given under my hand and seal, this the twenty-second day of April, in the year one thousand eight hundred and fourteen.

LOUIS DOLIVES, *J. C. C. M.*

In presence of—JOSHUA KENNEDY.

Deed from William E. Kennedy to Joshua Kennedy.

Received in office, 29th March, 1830.

STATE OF ALABAMA, *Mobile county, ss:*

Know all men by these presents, that I, William E. Kennedy, for the consideration of the sum of two thousand dollars, to me in hand paid by Joshua Kennedy, (of Tensaw,) the receipt of which I do hereby acknowledge, have bargained, sold, deeded, and confirmed, and I do by these presents, bargain, sell, deed, and confirm, to the said Joshua Kennedy, his heirs and assigns, forever, all those following described lots, pieces, or parcels of land, viz., all those two lots situated, lying, and being in the town of Mobile, at the northwest intersection of Dauphin and Hamilton streets, containing fifty-five feet front on the north side of Dauphin street, and extending back northwardly one hundred and ten feet; bounded on the south side by Dauphin street; on the east side by Hamilton street; and on all other sides by lots belonging to the said William E. Kennedy; and also all those squares, pieces, or parcels of land, situated, lying and being in the town of Mobile, bounded on the north side; on the east side by Jackson street, on the south side by Government street, and on the west side by Franklin street, beginning at the southwest intersection of Dauphin and Jackson streets; then running along the west side of Jackson street, six hundred and twenty-nine feet, to Government street; then westwardly along the north side of Government street, four hundred and ninety-seven feet, to Franklin street; then northwardly along the east side of Franklin [street,] six hundred and twenty-nine feet, to Dauphin street; eastwardly along the south side of Dauphin street, four hundred and ninety-seven feet, to the beginning corner; and also all that lot, piece, or parcel of ground, situated in the town of Mobile, bounded on the south side by St. Francis street; on the west side by a lot formerly [owned] by Bazeal; on the east side by the river Mobile; and on the north by vacant lots, and granted to me by the Spanish government the 26th day of September, 1806, and the grant for the same recorded in the land office, in book D, [pages] 27, 28, 29, 30, and 31; and also all that square of lots, piece, or parcel of land in the town of Mobile, bounded north by Government street, east by Jackson street, south by Charlotte street, and north by Hamilton or Bodo Adams's lot, and being that square of lots that lies

between John Johnston's and Bodo Adams's lots. To have and to hold the said lots, pieces, or parcels of land and premises, with all and singular the rights, titles, members, and appurtenances, thereunto belonging, or in any wise appertaining, unto him, the said Joshua Kennedy, his heirs and assigns, forever.

In testimony of which I have hereunto set my hand and seal, this 27th day of March, 1820.

WILLIAM E. KENNEDY.

In presence of—DIEGO MCVOY.

The original deed, of which this is a copy, was produced by the executors of Joshua Kennedy, on motion by the plaintiff, and the body of the deed proven to [be] in the handwriting of Joshua Kennedy.

STATE OF ALABAMA, *county of Mobile:*

Be it remembered, that on the twenty-eighth day of March, in the year of our Lord eighteen hundred and twenty, personally appeared before me, Henry V. Chamberlain, esquire, a justice of the quorum for said county, William E. Kennedy, whose name is subscribed to the foregoing instrument of writing, who acknowledged that he signed, sealed, and delivered the same for the uses and purposes therein expressed.

In witness whereof I have hereto set my hand and seal, the day and year aforesaid.

HENRY V. CHAMBERLAIN, [SEAL.]
Justice Quorum.

THE STATE OF ALABAMA, *Mobile county, ss:*

I, William Taylor, clerk of the county court of said county, certify, that the foregoing is a transcript of the record of the deed from William E. Kennedy to Joshua Kennedy, as recorded in my office, in deed book C, pages 270, 271, and 272.

Given under my hand and seal of office, this fourth day of June, A. D. 1839.

WILLIAM TAYLOR, *Clerk.*

SENOR GOBERNADOR GENERAL:

Alexandro Baudin, vecino de esta plaza de la Mobila, con el respeto debido a V. S. se presenta y dice, que hallandose un terreno vacante situado al nordeste de la Mobila, haciendo frente al lado Oriental de la calle real de cinqta. perchas, y extendiendose al este al Rio de la Mobila, lindando por la parte del norte con tierras de Aerry, y al oeste par la calle real; al sur por la calle de San Juan, y al este por el Rio de Mobila; deseando establecerse sobre dicho terreno que le combiene por su oficio de carpintero de ribera; por lo que A. V. S. suplica se sirva concederle el dicho terreno, y mandar se le den los documentos necesarios al efecto; que es gracia que espera recevir de su conocida equidad. Mobila, veinte y ocho de Junio, de mil setecientos noventa y ocho.

ALEJANDRO BAUDAIN.

Informe.

SENOR GOVERNADOR GENERAL:

El suplicante es criollo de esta plaza, y carpintero de ribera, que solicita establecerse y poder fabricar sin embarazo sobre el antedicho terreno, y segun los informes que me han dado quatro vecinos respectables de esta plaza de que el terreno era realengo, y no pertenecia á ninguna persona; por lo que V. S. determinara lo que fuere de su agrado. Mobila, veinte y ocho de Junio, de mil setecientos noventa y ocho.

MANUEL DE LANZAS.

Decreto.

Nueva Orleans, diez de Julio, de mil setecientos noventa y ocho. El commandante de la plaza de la Mobila, establecera esta parte sobre el terreno que solicita en el parage mencionado en el antecedente memorial, estando vacante, y no causando perjuicio alguno.

MANUEL GAYOSO DE LEMOS.

Es conforme a su original que existe en esta commandante de mi cargo á que me remito, y a pedimento del interesado doy el presente ante dos testigos de asistencia, a falte de escribano publico, y en dos foxas de papel ordinario, por no estar en uso el sellado. En la plaza de Mobila, a veinte y cinco de Septiembre, de mil ocho cientos y cinco.

FRAN'O. MAXIM. DE ST. MAXENT.

FRANCISCO CANEDO,
JUAN SAEZ.

Translated and recorded in book C from pages 54 to 56.

ED. KINGSTON, *Clerk.*

Book A, page 1.

The honorable county court of Jackson county met according to law, 23d of May, 1813; present, Thomas Bilbo; chief justice, Benjamin Youngblood and Robert Williamson.

Motion by Edwin Lewis to prove the will of Joseph Collins, deceased, and that letters testamentary be granted to Benjamin Lanier, in right of Elizabeth, his wife, one of the executors appointed in said will, on which the will was proved to the court, and proven by the oath of E. Lewis, one of the subscribing witnesses, and ordered to be recorded, and that letters testamentary be granted according to motion; *and that motion*, and that George Farragut, James Ware, and John B. Budo be appointed appraisers of the personal estate of said (deceased,) and return the same *in the same* in three months to the chief justice of the county court. Benjamin Lanier appointed in open court, and took the oath of executor to the will of Joseph Collins, deceased.

Signed, WILLIAM HOWELL, *Clerk.*

WEST FLORIDA, *Pascagoula:*

In the name of God, amen. I, Joseph Collins, of this place, being weak in body, though sound mind and memory, do ordain, constitute,

and appoint this my last will and testament, revoking all other wills heretofore made by me.

First. It is my will and desire that all my just debts shall be paid; after which, I will and bequeath unto my three sons, George Emly, Sidney Eugene, and Joseph Collins, all being the children of Elizabeth Wilson, all the residue and remainder of my estate, both real and personal, of whatever nature, in equal shares, which remain after the payments of my just debts, to them and to their heirs, forever; and for the purpose of carrying this my last will and testament into execution, I do ordain, constitute, and appoint, Elizabeth Wilson, William Wilson, of this place, and Nicholas Cook, of Mobile, my executors, any two of whom may do any act as executors, to bind the whole; of and in case one or more of them should die, then the vacancy occasioned by such shall be filled, the nomination and appointment of the parish judge, or such other officer as may have jurisdiction of the probates.

In testimony whereof I have hereunto fixed my name and seal, this fourteenth day of June, eighteen hundred and eleven; interlined before sealing the word of Mobile, after the name of Nicholas Cook; the above is my last request. JOSEPH COLLINS [SEAL.]

In presence of—

E. LEWIS,

her

MARGARET X FAYER,

mark.

BENJAMIN GOODWIN,

his

JEAN B. X BANDRO,

mark ordinaire.

Recorded 28th August, 1813. WILLIAM HOWELL.

Inventory of personal estate and appraisement of Joseph Collins, deceased, of Pascagoula, to wit:

1	lot surveying instruments, containing a compass, chain, Jarod staff, painting instruments, small case of pencils, paints, and brushes for painting, and estimated together	$50 00
1	level	2 00
1	military hat	5 00
1	spy glass	25
1	sword and belt	20 00
1	dressing case, two razors, and one hone	1 50
1	Gibson's Surveying	1 25
1	Peck's Evidence, Gradon's Digest, Navigation, Blunt's new practical Navigation Laws, Survey, Barrett's Dictionary, Miller's Guide, Treatise on Artillery, Waxton Catalogue	8 00
1	virge old watch, out of repair	2 00
1	book maps, estimated together	1 00
1	trunk	0 00

Recorded 28th August, 1813. WILLIAM HOWELL, *Clerk*.

MISSISSIPPI TERRITORY, *Jackson county:*

We, James Ware, Jean B. Bandro, George Farragut, having been sworn agreeably to law to appraise the personal estate of Joseph Collins, (deceased,) have appraised the same agreeably to law, to the above estimated inventory.

Given under [our] hands and seals, this fourth October, 1813.

JAMES WARE,
GEORGE FARRAGUT,
his
JOHN B. X BANDRO.
mark.

Recorded the fourth of October, 1813.

WILLIAM HOWELL, *Clerk.*

PASCAGOULA, *West Florida:*

Memorandum of all my property out of which my executors are to pay my just debts, and apply the overplus to the legacies according to my will of the 12th instant. In the summer of 1798, I put into the hands of Nicholas Gonanur, of New York, a bond for 1200 dollars to collect of Samuel Sergeant, of Carrason. There is some land, the quantity not recollected, which I improved in company or jointly with Colonel Dury McNair, of Pittsburg, laying near Presquil, near Lake Erie, supposed to be about 4000 acres to my share, which will better appear by agreement with Thomas Hutchins, (for him to dispose thereof,) dated in the year 1810. One-half of the tract of land, and the saw mill on Fish river, owned jointly by myself and Panton, Leslie & Co., which will appear by articles of agreement between myself and John Forbes, for them, for which William Forbes offered me $2500, when the mill was at work, for my half. There is an attachment in the hands of General Adair for a bill [of] 2666 dollars, as also interest and protested damages, which was accepted by Wheeling & Miller, of Philadelphia, and the amount attached in the hands of Andrew Holmes, merchant, Lexington, Kentucky, which will appear among my papers more fully in the agreement with General John Adair; when recovered, there is upwards of 2200 dollars to be paid to John Hair, merchant, of Port Pierre in 1798, say, I think, it's about $2240, which will better appear by his account current among my papers.

There is a tract of land at Mobile Point of 36 acres front and 26 acres, and planted it in cotton and corn; I built a house with four rooms, and other out-houses. In the town of Mobile, one large lot, fronting on the river 34 perches, and Royal street the same, and in depth 30 perches, as will appear by papers in my possession.

There is also ten acres in the vicinity of Mobile, for which I have Doctor William E. E. Kennedy's obligation to convey, as will more fully appear by his obligation, dated 22d November, 1806. Also, an equal half of 800 acres, lying on the south side of Portage creek, about three miles from Mobile, which will more fully appear by Dr. William E. E. Kennedy's conveyance, dated *conveyance, dated* 26th November, 1806.

There is 800 acres on the east side of Pascagoula, which I bought from Simon Cumbert, near Mills.

There is also 800 acres, which I bought from Madam Joseph Krebs, on the east side of the river, where her old cowpen was, and known by the name of Little Bluff.

There is a tract of land surveyed for John Lynd, including both sides of Pascagoula, about Cedar creek, for which I have his obligation for one-half; as also the agreement of John Forbes & Co., who was interested with Mr. Lynd, and will appear by the agreement signed by Mr. Lynd, John Forbes & Co., and Mr. Simpson.

There is on Pearl river a large tract, conveyed to me, which will appear by the deed of conveyance among my papers, lying on the east side above Tavres, according to a warrant of survey, dated in 1794.

Diego McVoy's obligation, dated 4th May, 1808, for one-fourth of a tract of land of about 800 acres, lying between Faver and Tountanelle, about half a mile south of Mobile fort, and fronting on the river.

I have due me from the King of Spain my pay from the 10th June, 1804, until 1st of April, 1810, at the rate of 62 dollars per month, as will appear by the vouchers in my trunk, left in the hands of John Lyme, esq., notary public, New Orleans, exclusive of my perquisites as commandant of Pascagola, during three years and eleven months of said time. Done at this place, 14th , 1811.

JOS. COLLINS.

NOTE.—Mr. Aubin de la Forest holds two of my notes, one for $200, another for $99; also another account and note for $70 $\frac{50}{100}$. The latter has been paid, which will appear by Mr. Nicholet's order, and his son's receipt; and when the said De la Forest presents the two first mentioned notes, they are just and must be paid; but on condition that he pays my deposite fees for the estate of Nicholet at 5 per cent. on $9000, and $108 which I disbursed for provisions and other expenses while under my charge as depositor.

THE STATE OF MISSISSIPPI, *Jackson county:*

I, Samuel Davis, clerk of the probate court, in and for the county of Jackson, and State aforesaid, do hereby certify, that the foregoing is a true and perfect copy of the will of Joseph Collins, deceased, and the probate thereof. And also the inventory and appraisement of the personal property, and a memorandum of the real estate, &c., of the said Joseph Collins, deceased, together with the proceedings of the court of Jackson county, at the time the said will of Joseph Collins was admitted to probate and record, as the same appears of record in my office.

Witness my hand and seal of office, this twenty-third day of May, A. D. one thousand eight hundred and forty-four.

SAMUEL DAVIS, *Clerk, P. C. J. C.*

STATE OF MISSISSIPPI, *Jackson county:*

I, John Fairley, presiding judge of the probate court for the county of Jackson, and State of Mississippi, do certify, that Samuel Davis,

whose certificate appears above at the date thereof, was and now is clerk of the said court, and that his certificate and attestation is in due form.

Witness my hand and seal, this twenty-fifth day of May, A. D. 1844.

JOHN FAIRLEY, *J. P.* [SEAL.]

UNITED STATES CIRCUIT COURT:

SIDNEY E. COLLINS
vs.
WILLIAM R. HALLETT, R. L. WALKER, and others.

Executors of the last will and testament of Joshua Kennedy, deceased.

Messrs. STEWART AND EASTON:

GENTLEMEN: You will please take notice, that you will be required to produce, on the hearing of this cause—

1. The original articles admitted by you in your answer to be in your possession, and signed by William E. Kennedy, which are copied in the deed to Innerarity, appended to the bill as an exhibit.

2. The deed from William E. Kennedy to Samuel Kitchen, attached as exhibits to the bill.

3. The deed of the plaintiff and George Collins to William Kitchen.

4. The deed from Joshua Kennedy to Samuel Kitchen, for the land on the north side of Dauphin street, bounded by the river, executed in January, 1820, and recorded in book C, of the county records.

5. The deed from William E. Kennedy to Joshua Kennedy, dated 27th March, 1820, and recorded in the county records in book C, page 270.

6. The original papers of the Price and Alexander Baudain claims, with all the evidences of title that have issued from the Government of the United States.

7. The deeds of William Kitchen and Samuel Kitchen, and of either of them to the other, and to Joshua Kennedy, for the land in dispute.

Mobile, April 15th, 1845.

CAMPBELL & CHANDLER,
Attorneys for Plaintiff.

Service accepted,

STEWART & EASTON.

Circuit court of the United States, southern district of Alabama.

MOBILE, *April 12th*, 1846.

SIDNEY E. COLLINS
vs.
HALLETT AND WALKER et al.

1. GENTLEMEN: We gave you notice the 15th April, 1845, to produce, upon the hearing of the cause aforesaid, the original articles of agreement in your possession, signed by William E. Kennedy, and a

copy of which is found in the deed of William E. Kennedy to James Innerarity, attached to the bill, and providing for a division of the Baudain tract (so called) between said Kennedy and the father of the plaintiff.

2. Also the original deed from William E. Kennedy to Samuel Kitchen, one of the exhibits to the bill, and which the proceedings disclose you have in your possession.

3. The deeds of the plaintiff and George Collins to William Kitchen, which the proceedings disclose to be in your possession.

4. The deeds from Joshua Kennedy to Samuel Kitchen, for lands on the north side of Dauphin street, and bounded east by the river, executed in January, 1820, and recorded in book C of the county records.

5. The deed from William E. Kennedy to Joshua Kennedy, dated 27th March, 1820, and recorded in the county records in book C, page 270.

6. The original papers of the Price and Baudain claims, with all the evidences of title that have been issued by the Spanish and American Governments, the mesne conveyances in regard to the same from their first inception, by which Joshua Kennedy claims. Also the deeds of Samuel Kitchen and William Kitchen for the land in dispute, for the land in controversy.

These papers are again demanded of you, and you are again required to produce them on the hearing. And you will now take notice, that we shall produce upon the hearing a copy of the map, made by Matthews in 1818, of a division of portions of the Price claim, and notify you to produce the original. Also the deed from William E. Kennedy to Henry Toulmin, made under the will of Price, and shall use, if need be, transcripts from the land office of the Price, Baudain, and Collins claims, and the action upon them. Also transcripts of the deposition of Samuel Kitchen, and transcripts of the records of probate of the will of Jos. E. Collins.

CAMPBELL & CHANDLER,
For Plaintiff.

To Messrs. STEWART & EASTON,
For Defendants.

Received April 13th, 1846. A copy:
STEWART & EASTON,
Attorneys for A. F. Garvin.

The deeds which appear in the record, and which are described in this notice, were produced on the hearing by Hallett and Walker, executors of Joshua Kennedy, in obedience to the notice, and the copies are copies from the originals.

CAMPBELL & CHANDLER,
For Plaintiff.
STEWART & EASTON,
For Hallett & Walker.

Subpœna.

United States of America, circuit court of the United States for the fifth judicial circuit and southern district of Alabama.

The President of the United States, to the marshal of said district, greeting:

You are hereby commanded to summon Wm R. Hallett and Robert L. Walker, executors of the last will and testament of Joshua Kennedy, deceased, John H. and Secluda Hastie, Augustus R. and Mary Meslier, Clarissa Kennedy, Augustus Kennedy, Joshua Kennedy, James Innerarity, Saml. Kitchen, Wm. Kitchen, Jas. Campbell, and the President and Directors of the Branch of the Bank of the State of Alabama, at Mobile, who are citizens of the State of Alabama, to be and appear before the honorable the circuit court aforesaid, at the place of holding said court, at Mobile, at rules to be held on the first Monday of June next, at the clerk's office of the court aforesaid, to answer the bill of complaint filed before said court on the 27th day of April, A. D 1844, by Sidney Eugene Collins, who is a citizen of the State of Missouri. Herein fail not, and have you then and there this subpœna.

Witness the Hon. Roger B. Taney, chief justice of the Supreme Court of the United States, and the seal of said circuit court, this 1st Monday of April, in the year of our Lord one thousand eight hundred and forty-four.

Issued the 1st day of May, in the year of our Lord one thousand eight hundred and forty-four.

Attest: DAVID FILES,
Clerk C. C., Southern District of Alabama.

The defendants are required to enter their appearance on or before the first Monday in June next, otherwise the bill will be taken as confessed.

[SEAL.] DAVID FILES,
C. C. C. S. D. Alabama.

Marshal's return.

Received 1st May, 1844, and executed on all parties 29th May, 1844.
WM. ARMISTEAD, *U. S. M.*
By C. CUYLER, *D. M.*

Answer of Jas. Innerarity.

To the honorable the circuit court of the United States, for the judicial circuit, sitting in equity at Mobile, in the southern district of Alabama.

The separate answer of James Innerarity to the bill of complaint against him and others, filed by Sidney E. Collins, in this honorable court.

This respondent, saving and reserving all matters of exception in the said bill contained, for answer thereto, or to so much thereof as he is advised it is material to answer unto, answering says:

That he, this defendant, claims no interest whatever in the land which is the subject of this controversy, and has none, and has pretended to none for a great number of years, as the bill of complaint will show; and submits to the court, that the complainant is entitled to no relief against him, and that he has been improperly made a defendant in this cause for the purpose of relief; and that no further answer is in any manner necessary to be made by him to said bill, other than the discovery called for by the complainant; and that he is entitled to be dismissed, with his costs in this behalf.

But this defendant, being called upon to make discovery and disclosure of his acts and connection with the subject of controversy, in obedience to the process of the court and prayer of the bill, doth discover and disclose his connection therewith, which is as follows:

This defendant saith, that it is true that Joseph E. Collins did reside in his lifetime at Pascagoula, and was well known to this defendant while both resided in this county under the Spanish Government. The said respondent died, as he believes, not in the year 1812, but in the summer of the year 1811, at Pascagoula, then in the possession of Spain. The said Collins was never married, that this defendant ever knew or heard of, but lived with a woman named Elizabeth Wilson, and who was not his wife, nor claimed to be such, so far as this defendant ever heard. By this woman, however, the said Collins had several children, say probably three; but this defendant was not personally acquainted with any of them, except George E. Collins, the oldest. The said Joseph E. Collins died intestate, so far as this defendant ever knew or learned at the time, and he never heard of his making any will; none was ever exhibited in Mobile, and this defendant never heard that he made any; at all events none was produced or recorded in Mobile, and none was ever heard of by this respondent.

Further answering, this respondent saith, that the said Joseph E. Collins had had various transactions with the firm of John Forbes & Co., of which firm this defendant was a partner, and the result was, that a large debt was due from said Collins to said firm at the time of his death. This indebtedness grew partly out of the settlement of a copartnership account of a saw-mill, in which said Collins was a partner with John Forbes & Co., and partly for goods sold, money advanced, &c. This debt was fully recognised, and in no manner disputed nor controverted by the said Collins, but was an admitted debt.

This respondent further saith, that no one appeared to represent the estate of said Collins for a very long time after his death, many years; this defendant became anxious to secure and collect the said debt, and, inasmuch as he knew of the contract or agreement between William E. Kennedy and said Joseph E. Collins, made in the year 1806, as charged in the complainant's bill, he believed, finding no other means of collecting his debt, that, although the title of Collins was not confirmed, and the right of Collins was by Kennedy denied, and alleged to be lost and covered by higher and adverse title held by him, still this defendant believed that by good management, and by force of the terms of said

agreement, he could make the said title available as representative of Collins. For this purpose this defendant employed David Rust and Samuel Acre, esqrs., attorneys at law, and placed the claim in their hands; and under their advice he applied to the county court of Mobile county for administration on the estate of said Collins, which was granted in the year 1819; and after the grant of such letters he, this respondent, under the advice of his counsel, and so as to put the title in a situation to pay this debt, demanded of William E. Kennedy a conveyance in compliance with the terms of said agreement; said Kennedy insisted that the title of Collins was lost, and that his better titles had and ought to prevail over it; but this defendant, being advised that the agreement by its terms would control that question, demanded that the agreement should be performed specifically, be the right what it might; and to this reasonable demand the said William acceded, and he did execute the deed, dated 2d of March, 1820, in favor of this respondent as administrator of said Joseph E. Collins, as alleged in the bill.

This respondent further answering saith, that although the said title was unconfirmed, incomplete, and disputed, yet he considered it as an interest in the land of sufficient value to pay his debt, and applied to the county court of Mobile county for an order of sale for the same by petition; upon which the court made an order, citing all persons interested to appear on a certain day to contest the same.

This respondent further answering says, his title was disputed by Samuel Kitchen, who also claimed the land under another deed made by William E. Kenedy; and that pending this contest William Kitchen made a purchase of all the right and title of George E. Collins, and of Sidney E. Collins, who claimed to be the heirs of said Joseph E. Collins, and they released and conveyed all their residuary right in said land to William Kitchen, the result of which was, that the right of this defendant was reduced to the amount and value of the claim of John Forbes & Co. as creditors, there being no other debt or claim against said estate; and the Kitchens claimed to be entitled to all the title, except the lien of the debt due to John Forbes & Co.; and in this state of things a bill in chancery was filed by William Kitchen in the circuit court of Mobile county, against the defendant, to compel a conveyance of the said land to him, as the transferee of the title of the heirs of Collins; and as it appears this bill was answered by this respondent and tried, and at March term, 1832, a decree was rendered by which it was decreed that this respondent should, on the payment of the sum of $2,233.22, by said William Kitchen to this defendant, being the amount of his debt and interest, convey to the said Willam Kitchen all title to said land, and accordingly he did so by deed dated the 28th September, 1832, as exhibited by the complainant, which deed was drawn up by Samuel Acre, solicitor of this respondent, who conducted the whole proceeding for this defendant. And this defendant says, the said proceedings, on his part, were in nowise collusive, but were fair and bona fide; were had to maintain just rights and secure a just and

lawful debt, and that no collusion or fraud existed in any part of them, so far as he has any knowledge or concern.

This defendant further discovers and saith, that he does not know whether or not it be true that the record and files of said chancery cause are not to be found; he says that he has none of said papers, and if lost or destroyed, he does not know how or when it happened; he has not even the copy of the bill of William Kitchen served on him; he presumes he deposited it with Mr. Acre, his solicitor at the time, as was his custom; and, indeed, his recollection of the particulars of said suit is indistinct, so that he could not now detail them; and many of the details of this transaction are not now remembered, as it was closed long since.

This defendant further saith, that in all the transactions there was no collusion or fraud between him and the said Kennedy, Kitchens, nor any one else, and he knows of no collusion or fraud in the business; that the price *was* paid by Kitchens to this defendant and the Collins, was at the time, as he believes, a fair compromise price under all the circumstances attending the transaction, the title, and the then value of the property. That he never heard of any dissatisfaction until now, from the Collins nor from any one else. That the Collins, of whom George E. Collins appeared to be the active agent and manager, had divers dealings with the Kennedys at the time and afterwards, as he is informed and believes, and sold to Joshua Kennedy other claims of theirs. That said George E. Collins never made any claim against this defendant, as administrator of his father's estate, concerning this transaction, nor censured him in any respect on account of said transaction, but always acquiesced in it as a thing settled. That he did apply, some time after these transactions, to this respondent as administrator, for information concerning the title to the saw mill property above referred to, which they claimed title to, received the information, and acquiesced in the settlement. That he appeared active, intelligent, and well informed of his father's rights, and had come here to look after them, and was attending to the settlement of them with activity; this was about the year , and he appeared to know all about his father's affairs.

This respondent saith, he hath none of the deeds or papers referred to in this transaction and referred to in said bill; and all the deeds made or received by him in this transaction were drawn up by Samuel Acre, under whose advice this defendant acted, who knew more about the particulars of it than this defendant did; but the said Acre is not now living.

This respondent cannot say precisely when the said complainant and his brother George E. were born, but is well satisfied, from his knowledge of the family, that they, and each of them, were of full age at the date of their respective deeds to William Kitchen, set forth in the bill, and he never heard the fact denied or questioned till the filing of this bill.

This defendant denies all combination and fraud, and having fully

answered and discovered, as he is advised, all the matter in said bill charged, as is material to be answered and discovered, prays to be hence dismissed, with his reasonable costs in this behalf most wrongfully sustained.

JAS. INNERARITY.

STATE OF ALABAMA, *Mobile county, ss:*

Personally appeared before me, *Edwin* Rust, a justice of the peace in and for said county, James Innerarity, who, being duly sworn on the holy evangelists, saith, that all the matters and things set forth in the foregoing answer, as of his own knowledge, are true, and those matters and things stated as derived from others, he believes to be true.

JAS. INNERARITY.

Subscribed and sworn to before me, at Mobile, this 29th day of August, 1844.

EDMUND RUST, *J. P. M. C.*

Filed 2d Sept., 1844. D. FILES, *Clerk.*

Demurrer of Augusta Kennedy and Joshua Kennedy, infants.

In the circuit court of the United States, for the southern district of Alabama, at Mobile.

The separate demurrer of Augusta Kennedy and Joshua Kennedy, who are infants, children and heirs-at-law of Joshua Kennedy, and who appear by their guardian ad litem, William R. Hallett, and now file their demurrer to the bill of complaint of Sidney Eugene Collins, against them and others, filed in this court.

The said Augusta Kennedy and Joshua Kennedy, infants, by their guardian ad litem, William R. Hallett, for answer to the said bill of complaint say, and show to the court, that the said Sidney Eugene Collins is not entitled to any relief, or to any decree in this court, by reason of any or all of the allegations in his said bill of complaint set forth, in the manner and form in which they are in said bill specified, as they are advised; and that they are not bound or required to make answer to the same in this court, as the matter therein contained is not sufficient, according to the law of the land and the rules of this court, to maintain his said complaint; and that the said bill should be dismissed from this court without any further answer on their part. And for causes of demurrer they, these defendants, show and say—

1. That the said bill seeks to obtain the possession of the lands therein specified, by virtue of a title and agreement made by the father of the complainant in the year 1806, more than thirty years before the filing of said bill; and that, by the lapse of time, all remedy is lost on said agreement.

2. That the said complainant seeks to recover the possession of said land under the force and effect of a deed, made by William E. Kennedy in the year 1820, under which the title of the complainant is supposed to arise, and this bill is not filed within twenty years after such title accrued.

3. That the complainant seeks to avoid and vacate a deed of release made by himself, for the land claimed, in the year 1830; this bill being filed only in the year 1844, and not in such time as is deemed reasonable in equity to vacate a deed made by ones self on the pretext of fraud in obtaining such deed.

4. That the complainant seeks to avoid and vacate a deed of release made by George E. Collins in the year 1829, under whom he claims, on the ground of fraud and infancy of said George, when the said George never did, in his lifetime, elect to vacate the said deed and restore the consideration, but died without making such election.

5. That the complainant seeks to avoid his own deed, and that of his brother, under whom he claims, by reason of fraud committed by Joshua Kennedy, and fraudulent representations by him made, when no such attempt was made during the lifetime of said Joshua Kennedy, who was alone able to answer such charge; and that the same cannot rightfully be made, nor fairly determined, after his decease.

6. That the complainant seeks to recover the possession of land by descent from his father, when it does not appear that his said ancestor was ever in possession of said land, nor himself ever in possession; his ancestor having died in the year 1812, as the bill alleges, and the possession having been held adversely to the complainant's right.

7. That the complainant seeks to avoid his deed, and that of his brother, by reason of infancy in himself and his brother, when the said bill does not directly allege that they were in fact infants when the deeds were made, but only puts in issue that they were so informed and believed, which is not material.

8. That the bill seeks to avoid the title of Joshua Kennedy on account of fraud, when there is no sufficient specification of facts constituting fraud, such as would be considered sufficient by the court to vacate such titles. For all which, and other causes sufficiently appearing on the face of said bill, and because no sufficient cause is shown thereby to entitle the said complainant to the relief he seeks, nor any relief, they pray the decree of the court in this behalf, and that the said bill may be dismissed with costs, &c.

STEWART & EASTON, *Solicitors*,
For Augusta and Joshua Kennedy, infants.

William R. Hallett, guardian ad litem, appointed to defend for Augusta Kennedy and Joshua Kennedy, who are infants, being duly sworn, saith, that the demurrer filed for them, the said infants, in this cause, is not interposed for delay.

W. R. HALLETT, *Guardian.*

Sworn and subscribed at New York, before me, this 22d day of October, 1844.

A. VANDERPOOL,
Associate justice of the supreme court of New York.

I, George N. Stewart, solicitor for Augusta and Joshua Kennedy, infants, do hereby certify, that the demurrer filed in this case is, in my opinion, well founded in point of law.

GEORGE N. STEWART.

Filed 23d December.

D. FILES, *Clerk.*

Answer of J. Campbell.

To the honorable the judges of the circuit court of the United States for the southern district of Alabama:

The separate answer of James Campbell to the bill of complaint of Sidney Eugene Collins against this defendant and the heirs and executors of Joshua Kennedy, deceased, James Innerarity, Samuel Kitchen, William Kitchen, and the President and Directors of the branch of the Bank of the State of Alabama, at Mobile, in this honorable court exhibited, respectfully shows: That this defendant, now and at all times, saving and reserving to himself the benefit of all and singular errors, imperfections, and uncertainties, in the said bill of complaint contained, for answer thereunto, or to so much thereof as he is advised it is material or proper for him to answer unto, answering, says: That as to all the matters and things touching the parentage of the said complainant, the death of his said supposed father, the time of such death, the number of children left by the said Joseph Collins, their names, or the manner in which the said Joseph Collins disposed of his property, this defendant has no knowledge, and cannot, therefore, speak of his own knowledge; nor has he any information relative to the said several matters; nor can this defendant speak as to the deaths of any children of the said Collins; nor whether they were ever married, or died intestate; nor whether the said complainant is the heir at law of his two brothers so alleged to have been the children of the said Joseph Collins; nor whether the said Joseph did or did not obtain from the Spanish government the grant for the parcel of lands which is exhibited with the said bill of complaint; nor can this defendant say as to any conflict of titles or boundary, any between the said alleged claims of the said Joseph Collins and William E. Kennedy; nor whether there was any agreement made between them, as is alleged in the said bill; nor what was the condition of the said lands; nor to what purpose they were applied; nor what proceedings may have taken place before the commissioners appointed to inquire into titles; nor what his report was as to any of the claims mentioned in the said bill; nor can this respondent answer as to the said alleged conveyance by William E. Kennedy to the said defendant, Samuel Kitchen; nor when the same was made or deposited for record; nor what the said Kitchen may have stated in the suit in the said bill mentioned; nor can this respondent answer as to the relationship of the said Samuel Kitchen to the said Kennedy; nor his place of residence; nor what peculiar circumstances of intimacy may have existed between the said Kennedys; nor what was the purpose with which the aforesaid deed to Kitchen was executed; nor whether there is any

conveyance on record from said Kitchen to Joshua Kennedy; nor can this respondent answer as to the possession by the heirs and executors of the said Joshua Kennedy of the land, the subject of the said bill, though this respondent believes they, and persons claiming under the said Kennedy's title, are in such possession; nor can this respondent answer as to the said alleged contrivances which the said Joshua Kennedy is said to related to overcome the force of the articles of agreement said to have been made between William E. Kennedy and the said Joseph Collins, and the confirmation of them by William E. Kennedy in 1820; nor as to any of the divers matters charged as incidents and means of such contrivances; nor can this respondent answer as to the births, deaths, or ages of the complainant, or any of his said brothers; nor as to their residences and occupation at the period named; nor any thing respecting the deeds made by them to the said Kitchen; nor can this respondent answer as to the relationship between the said Joshua Kennedy and the said Kitchen; nor whether the said William Kitchen had or had not a deed from his father at the time spoken of; nor whether the said William was, as is charged, being with and acting for the said Joshua Kennedy; nor can he speak as to the alleged representations by the said Joshua Kennedy to the complainant and his brother; nor as to the place of the residence of the children of the said Joseph Collins.

This respondent admits the decree of the chancery court as charged in the said bill, but he cannot speak as to the control of the property by Joshua Kennedy under the alleged declarations to said George and Sidney Collins, nor what representations may have been made as to the age of the said sons of Joseph Collins; this respondent does not admit that large profits have been received from the said lands, but he cannot speak as to what amount, or by what particular persons. And further answering this respondent says that, as to all the various matters charged in the said bill, which are not herein expressly admitted, this respondent has no knowledge or information to enable him to answer thereunto; but forasmuch as to the object of the said bill is to charge this respondent, he prays the benefit of such proof of all the said several matters not admitted. And further answering, this respondent says, that whether the said several matters and things charged in the said bill of complaint be true or not, he, this respondent, ought not to be charged thereupon, because, he says, that on the thirteenth day of January, A. D. 1836, Joshua Kennedy being seized of a certain lot of lands, described as follows: Fronting fifty feet on Water street, between Saint Anthony and State streets, and running with the same width to the channel of the Mobile river, as of his demesne, did, on the day and year last aforesaid, for and in consideration of a large sum of money, to wit, the sum of thirty thousand dollars, grant the same to this respondent by deed of bargain and sale in fee simple. And this respondent avers, that at the time of the aforesaid contract of purchase between him, the said Joshua Kennedy, and this respondent, and at the time of the execution of the said conveyance, and at the time of the payment of the purchase money therein named, (which this respondent

avers was duly paid,) this respondent had no notice by any means whatever of the said complainant's alleged claim, nor of the circumstances out of which the same is alleged to have arisen. And further answering, this respondent says, that whether the several matters and things charged in the said bill to be true or not, he, this respondent, ought not to be charged therewith, because he says that, on the 12th day of March, 1833, Charles and Adolph Batre being seized of the lot next adjoining on the south, the lot above described, and of the same dimensions, as of their demesne in fee for a valuable consideration, to wit, the sum of $5,500, granted the same to this respondent in fee simple by deed of bargain and sale. And this respondent avers, that at the execution of the deed and payment of the purchase money, which was duly paid, this respondent had no notice whatever of the complainant's claim, or the circumstances on account of which it is said to have arisen, by any means whatever. And this deponent further answering says, that there is no sufficient description of the lands claimed by the said complainant contained in the said bill of complaint, by which this respondent can ascertain whether or not the aforesaid parcels, purchased from the said Joshua Kennedy and the Batres, all embraced in the said complainant's alleged claim; he supposes, however, that the said above described pieces are intended to be included, yet, that they are so included, this respondent denies and prays strict proof thereof, and the benefit of his aforesaid purchases. And this defendant says, that by an act of the General Assembly of the State of Alabama, made on the day of , A. D. 1813, it is amongst other things enacted, that no action shall be brought whereby to charge any person upon any contract for the sale of any lands, tenements, or hereditaments, unless the promise or agreement upon which such action shall be brought, or some memorandum or note thereof, shall be in writing, signed by the party to be charged therewith, or some other person by him thereunto lawfully authorized. And this respondent insists upon the said statute, and claims the benefit thereof as though he had pleaded the same. And this respondent prays that this his answer may be taken as a demurrer to the said bill of complaint, for he says, that if the said bill were true, which he in no wise admits, it does not contain any matter whereon this court can give the said complainant relief against this respondent.

And having *and having* thus answered, this respondent prays to be hence dismissed with his reasonable costs and charges.

JAMES CAMPBELL.

GIBBONS & FISHER, *Solicitors.*

James Campbell, the above respondent, being duly sworn, says, that the facts set forth in the above answer, so far as stated of his own knowledge, are true; otherwise stated, true to the best of his knowledge.

Subscribed and sworn to this ninth day of January, 1845.

JOEL A. ROBERTS,

Justice of the Peace, Mobile county.

Filed January 10th, 1845. JOHN FITTS, *Clerk.*

Answer of Samuel Kitchen.

Circuit court of the United States of America, for the fifth judicial circuit and southern district of Alabama.

The separate answer of Samuel Kitchen to the bill of complaint of Sidney E. Collins, filed in this court against him, and also against Hallett and Walker, executors of Joshua Kennedy, deceased, and against the heirs of said Joshua Kennedy and others.

This respondent, for answer to the complainant's bill, and to so much thereof as he is advised is material for him to answer, answering, saith:

That he does not know the complainant, nor has he ever had any acquaintance with him, or with Joseph E. Collins, or with George Collins, and therefore he cannot admit or deny that complainant is the heir at law of Joseph E. Collins, nor whether he inherited from his brothers. He is wholly ignorant as to all the matters whether the Spanish government ever granted Joseph E. Collins any land, and therefore he cannot answer concerning any such grants. This defendant also states that he is ignorant of all the matters and things alleged touching the deeds spoken of from complainant and George Collins to William Kitchen, and of the circumstances under which they were executed. He knows nothing of the deed from James Innerarity to William Kitchen, nor of the circumstances under which the same was executed. That he knows nothing of the Spanish grants to Thomas Price and to Alexander Baudain, except from hearsay; and as he presumes his title will be fully explained and produced on the trial, he does not deem it material or necessary that he should give a detailed statement of what he has heard in relation thereto.

But the respondent further answering saith, that he admits that William E. Kennedy executed to him the deed, a copy of which is attached to complainant's bill, and marked exhibit No. 4. This respondent states that he believes the deed was executed on the day it purports to bear date; that he has no reason to suppose it was antedated, and denies that it was antedated. That the history of said transaction is as follows: The said William E. Kennedy offered this defendant to sell him this parcel of land; that he went with W. E. Kennedy and examined it; that he really knew nothing of the title, but supposed, and did not doubt, that W. E. Kennedy had a good right to sell it, as he offered to do so, and he did not suppose he would deceive him. The price said W. E. Kennedy asked was seven hundred dollars. This respondent informed said W. E. Kennedy, after they had examined the land, that he was willing to make the purchase, provided he could make the payment in a particular way, which was this: Joshua Kennedy owed the respondent a debt, being over one thousand dollars, for building a mill and other services, and this respondent was willing to make the purchase if he could manage it so as to make the payment by getting said Joshua to settle with said W. E. Kennedy for the seven hundred dollars, the price asked by him. Upon this they went to Joshua Kennedy, and after some discussion it was finally agreed that

he would account to W. E. Kennedy for that sum, and that it should go as a credit on the amount due this respondent from said Joshua Kennedy. This being agreed all round, the said William E. Kennedy executed to the respondent the deed for the land, and Joshua Kennedy settled with him for it; in what particular manner this respondent does not know, but this amount was allowed as credit on the respondent's demand against Joshua Kennedy, before mentioned, and William E. Kennedy acknowledged to the respondent that he was paid. This respondent further saith, that this purchase so made was made solely for the account of this respondent, and in the mode of arranging the payment, solely with his own funds, the amount retained out of his account being the same to him as cash. That Joshua Kennedy had no interest whatever in said purchase, nor any connexion with the trade, except in arranging the payment for this respondent, as before stated. This transaction took place, to the best of respondent's recollection, independent of the date the deed bears, shortly after Christmas, and the whole matter was closed, as above stated, within a few days after going with W. E. Kennedy to look at the land. The respondent, to the best of his recollection, left the deed some short time thereafter with some one to have it recorded, and supposes it was recorded within the time required by law.

And this respondent further answering saith, that he made the purchase aforesaid bona fide, and believing he was getting a good title, and he did believe that he gave a full and fair price for the lot at the time; that shortly after the execution of said deed the respondent took possession of said lot of land, fenced it, and built a house upon it, and had possession of and occupied it for several years; that at the time of his purchase no one was in possession of the ground, and respondent did not know, nor had heard, of any one's claiming said land adversely to William E. Kennedy, nor of William E. Kennedy's having sold or deeded it to any other person; that he heard of no claim being had or pretended to said land until long after his deed, and when respondent was in possession of the land, and this was a claim of Robertson and Barnwell, who afterwards brought suit for it. This respondent cannot recollect who wrote the deed from W. E. Kennedy to him; he has not the original in his possession; but presumes it will be produced, when it will be shown in whose handwriting it is.

The respondent further answering saith, that he has heard read to him the charges in the bill, that in a deposition heretofore made by this respondent he stated that at the time of executing this contract with W. E. Kennedy he well knew of the existence of the deed of said W. E. Kennedy to James Innerarity, the validity of which he was willing to risk and test. This respondent now asserts, that he never intended to say that he knew James Innerarity had a deed to said land at the time of his purchase from W. E. Kennedy. And if it is so written, he believes it was a mistake, either in putting the question, or *or* that it was improperly understood by the commissioner, and thereby this respondent was made to say what he never intended; he has but a very in-

distinct recollection of giving his testimony, and he cannot believe he ever said, or intended to say, that he knew of the deed to James Innerarity from William E. Kennedy, at the time of the contract between W. E. Kennedy and this respondent. But this respondent can now only assert, that he never heard of any person's claiming the land until long after his deed; and therefore when he answered that, at the time he knew of the deed to James Innerarity, if he did so answer, he must have understood a different time, and subsequent to the making of his contract with William E. Kennedy. This is the only explanation he can give of his testimony; but he does not now even recollect the questions, distinctly, that were put to him, or how they were put. He, however, was then on oath, and is now on oath; he has no interest now; he had none then; and he has now answered according to the facts, and intended then to do the same.

This respondent further saith, that, after the death of Wm. E. Kennedy, and as this respondent believes in the fall or winter o 1825, said Joshua Kennedy applied to this respondent, and expressed himself anxious to obtain this piece of land for some purpose, which he then explained, but which this respondent does not now particularly recollect, and urgently pressed this respondent to let him have it, which this respondent finally agreed to; and did, about that time, agree to sell the land to him, with the exception of one lot of about sixty feet; and executed an instrument of writing, obligating himself to make a conveyance of it to the said Joshua Kennedy; at which time the said Joshua first became interested in the respondent's purchase from the said Wm. E. Kennedy. But still this respondent retained the possession, or rather the land was used by both as a lumber yard, for some time thereafter; and about the year 1831 said Joshua requested this respondent to make a deed for the land to William Kitchen, informing him that said deed would enure to the benefit of said Joshua, and be a full compliance with the respondent's obligation, which the respondent did, and at the same time agreed to let said Joshua have the lot of sixty feet, formerly reserved, and the deed was accordingly made for the whole. That, between the time when he first agreed to let Joshua Kennedy have the land, and the time when he executed the deed, a variety of transactions passed between them; and in those transactions the respondent was compensated or paid for the land first agreed to be conveyed; and, as to the lot of sixty feet, the said Joshua agreed to give the respondent other land of equal value for it.

And this respondent further answering admits, that Joshua Kennedy was his son-in-law; and being unable to give any further information or discovery of any other matter charged in the bill, and disclaiming all interest, prays to be discharged hence with his costs, &c.

DARGAN & LOCKWOOD, *for Respondent*.

THE STATE OF ALABAMA, *Baldwin county:*

Before me, Ward Taylor, a justice of the peace in and for said county, personally appeared Samuel Kitchen, and being sworn accord-

ing to law, on oath deposeth and sayeth, that the facts stated in the foregoing answer, as of his own knowledge, are true; and that those stated as of information derived from other persons, he believes to be true.

SAMUEL KITCHEN.

Subscribed and sworn to before me, this 21st December, 1844.
WARD TAYLOR, *J. P.*

And afterwards, to wit, on the second day of January, in the year of our Lord one thousand eight hundred and forty-five, being a day of a term of said court begun and held in and for said district, at Mobile, on the fourth Monday of December, A. D. 1844, the following proceedings were had, to wit:

(*Order.*)

SIDNEY E. COLLINS,
vs.
HALLETT & WALKER, Ex'rs, et al.

This cause being called, it is by consent of parties ordered by the court, that William R. Hallett be confirmed as guardian ad litem for Joshua Kennedy and Augusta Kennedy, who it is shown are infants, and the demurrer of the defendants having been heard, it is ordered that the same be overruled pro forma, but that the same matters may be insisted at the final hearing of the cause. On application of the plaintiff, leave is given to him to examine James Innerarity and William Kitchen as witnesses in the cause, the said plaintiff asking for no decree against them; and all objections to their competency as witnesses *is* reserved to the defendants. It is further ordered, that the judgments, pro confesso, be set aside, and that the parties file their answers within ten days from the date of this order.

Circuit court of the United States, for the fifth judicial district and southern district of Alabama.

Answer of J. H. Hastie.

The answer by John H. Hastie and Secluda, his wife, to the bill of complaint filed in this court against these defendants, and William R. Hallet and Robert L. Walker, executors of the last of Joshua Kennedy, deceased, and others.

These defendants, saving and reserving all advantages of the many insufficiencies and inconsistencies in plaintiff's bill of complaint, for answer thereto, say: They admit that Seclusa, the wife of John H. Hastie, this respondent, is one of the heirs of Joshua Kennedy, deceased; that Hallet and Walker are the executors of his last will and testament; and that the other defendants named in the bill as the heirs of Joshua Kennedy, are correctly named, and their ages correctly stated. But these defendants do not admit that the complainant is the heir-at-law of Joseph E. Collins, deceased; but, on the contrary, they state that they

are informed by those who were acquainted with Joseph E. Collins in his lifetime, that complainant and his two brothers, named in the bill George and Joseph, are the illegitimate children of Joseph E. Collins by one Elizabeth Wilson, their mother, and that the said Joseph E. Collins and Elizabeth Wilson were never married; which information they believed to be true. Therefore these defendants deny that said complainant is the heir-at-law either of Joseph E. Collins, deceased, or of his deceased portions.

These defendants further say, that they are informed that Joseph E. Collins is dead; therefore they admit it, but state that he died in the summer of 1811, and not in 1812. This they also state from information. They also admit that George and Joseph Collins, named in the bill, are dead; and these defendants are informed, and therefore they admit, that they died without being married and intestate.

These defendants cannot admit that complainant is entitled to any thing by devise, for they do not know whether Joseph E. Collins executed any proper devise or not, and therefore insist on complainant's producing proper proof of such devise, if any there be.

These defendants admit that Joseph E. Collins once petitioned the Spanish authorities for titles to the land in controversy, but that he never obtained any perfect grant or title to the same, but that some incipient steps were taken, which were never perfected into a title; and these respondents presume that the complainants have correctly shown all that was done by Joseph E. Collins towards obtaining a title, by his exhibit to the bill of complaint, marked No. 1; but they pray he may produce the original paper, if in his possession, or the record thereof, as the only knowledge these defendants have on this subject is hearsay, and the exhibits and charges of the bill.

But these defendants deny that Joseph E. Collins was ever in possession of the land, by virtue of said claim or title, or that any one else ever was. They deny that it ever was perfected into a title, but state that it was presented to the Government of the United States, together with the evidence on which it was founded, and that said title was rejected; and, further, that it was wholly void, and gave no rights to Joseph E. Collins, inasmuch as said Collins never took possession thereof, nor did any act thereafter towards the perfecting of the title from the time of his petition until his death.

They further state that the claim of the said Joseph Collins was void, for the reason that the lands petitioned for by him at the time had been granted by the Spanish Government, as will be hereafter shown, and that said grant, at the date of said petition, was valid, as will hereafter appear.

These defendants will not deny that William E. Kennedy did sign the agreement, as attached to the deed from him to James Innerarity, but whether this agreement was ever delivered to Joseph E. Collins, whether he accepted it, or gave any promises, or undertook any thing in consideration thereof, these defendants do not know; nor do they know whether Joseph Collins was ever [in] possession of said agree-

ment, or considered it in any manner obligatory, or that it gave him any rights; but these defendants deny that Joseph Collins was ever in possession of the land by virtue thereof, or that any one else ever was in possession under him.

These respondents further answering say, that William E. Kennedy did hold a claim or grant of said land, made by the Spanish Government to Alexander Bowden, for fifty perches front on Royal street, as these defendants were informed, and extending to the Mobile river, which was made about the year 1798; that it was contended by William E. Kennedy, that this grant covered the ground; but whether it was valid these defendants do not know; that it was confirmed by the Government of the United States for five perches only, and has never been located on any precise ground.

These defendants further answering say, that after the execution of said articles of agreement by William E. Kennedy to Joseph E. Collins, that William E. Kennedy purchased of one Thomas Price a grant made by the Spanish Government to him in the year 1798, which grant covered the land in controversy, together with other lands; that Thomas Price had been in possession of the land owned by this grant; that this title or grant has been fully recognised as valid by the Government of the United States, and that a patent therefor issued to Joshua Kennedy in the year 1837.

These defendants further say, that this grant to Price was valid and effectual, and that Thomas Price has been in possession of the land thereby covered, until he conveyed the same to William E. Kennedy some time in the year 1811.

These defendants further deny, that William E. Kennedy held possession of said lands by virtue of said articles of agreement, or that he admitted and recognised the validity of said agreement; but they insist that he always held possession of said land adversely to Joseph E. Collins, down to the time that he conveyed away the same, as will be hereinafter stated; and that no person, by virtue [of] the claim of Collins, deceased, from the Spanish Government, nor by virtue of said agreement, ever was in possession of said land, but that the same has ever been held adversely to Collins, his heirs devised, if any he has; and all other persons claiming any right, title, or interest in or under the title of Collins or said agreement.

These defendants further answering say, that they cannot deny, and therefore they admit, that William E. Kennedy did execute the deed to James Innerarity described in complainant's bill of complaint, a copy of which is attached thereto as exhibit No. two. But these defendants do not know the circumstances under which the same was executed; but they do here allege that James Innerarity, nor any other person, by virtue of said deed, or by any authority therefrom derived, ever did have or hold possession of said premises; nor did any one, either James Innerarity or any one else, ever enter upon said premises, by virtue either of said deed or of the articles of agreement executed by William E. Kennedy to said Collins. But these respondents

here state, that these lands sought to be recovered by this bill have been held adversely to Collins; and, as evidence thereof, they charge that William E. Kennedy never did recognise the articles mentioned to Joseph E. Collins, until he had conveyed the lands to Samuel Kitchen, as will be shown; nor has Joshua Kennedy, or said Samuel Kitchen, since recognised said articles, or the said deed from William E. Kennedy to said Innerarity.

And these defendants further state, and admit, that William E. Kennedy did execute the deed described in complainant's bill from him, the said Kennedy, to Samuel Kitchen, a copy of which is attached to the bill as exhibit No. four. But these defendants deny that said deed is fraudulent. They also deny that it is antedated; but insist that it was made on the consideration expressed therein, and at the time it bears date. They further deny that the said Samuel Kitchen had any notice of the claim of said Collins; they state that said Kitchen took possession of the said lands by virtue of said deed, and occupied and held it as his own until he conveyed, or contracted to convey, the same to Joshua Kennedy, as will be shown, and that he never recognised the claim of Collins or the claim of James Innerarity thereto.

And these defendants further saith, that, in the year 1824, or thereabouts, William E. Kennedy did, by deed, convey all his lands to Joshua Kennedy in the city of Mobile, and which was conveyed *by* Thomas Price by the Spanish government, as heretofore described, by virtue of which said Joshua took possession of the lands thereby conveyed; that at this time Samuel Kitchen was in possession of the land sought in this suit to be recovered, and claimed it as his own.

These defendants further answering say, that, after the death of William E. Kennedy, said Samuel Kitchen did sell said premises to Joshua Kennedy some time in the latter part of 1825; that said Samuel Kitchen did not then execute a deed for the same, but did execute some agreement in writing, as evidence of the sale, and that thereupon, or shortly afterwards, Joshua Kennedy entered and took possession of said premises, and occupied them as his own until his death, which occurred some time in the year 1838; and that his heirs and devisees, by virtue of deeds by him executed before his death, and by virtue of his last will and testament, have occupied the same adversely to all claims ever since.

These defendants further answering say, that the title under which they held and claim is the grant of Thomas Price; that it is by this title that William E. Kennedy held the premises adverse to Joseph E. Collins before he conveyed the same, and that it was by this title that Samuel Kitchen held the same adverse to the title or claim of Collins, his heirs, and to the claim of James Innerarity; that it was by this title to Thomas Price that Joshua Kennedy held the premises adversely to Collins; Innerarity and all others, and these defendants, hold the premises now adversely by the same title; and that the promise of these defendants, together with those they have connected together, amount to thirty-four or five years, during all which time possession has been

held adversely to the title of complainants. And these defendants insist on a lapse of time as a bar to a recovery in this suit, and the relief sought by the bill denied.

These defendants further answering say, that they admit that complainant has correctly described the deposition of Samuel Kitchen in their bill. That these defendants cannot explain it, but leave that to be explained by him; but they cannot admit that the deed from Wm. E. Kennedy to Samuel Kitchen was antedated or fraudulent, but deny the same; that they have endeavored to obtain the best information that can be obtained in reference to the execution of said deed, and the result satisfies their minds that said deed was dated bona fide, and not antedated.

These defendants further answering admit, that George and Sidney Collins, this complainant, did execute the deeds described in complainant's bill, copies of which are attached as exhibits No. 4 and 5 thereto, to William Kitchen; but that these defendants deny that they were obtained by fraud, false representations, or deceit; but insist that they were obtained fairly, upon a valuable consideration, with a full knowledge of the circumstances, on the part of George Collins and complainant; and, as evidence thereof, these defendants state that the deed of George was witnessed by Edwin Lewis, who had been his guardian and friend, and attorney at law, and they believe it was written by him, the said Lewis; that Lewis was a man of good character, and had not interest in the matter, and that defendants believe he would not have sanctioned a fraud on his former ward if one had been intended; that the deed of complainant is witnessed by A. McManus and John A. Stewart; that these defendants are informed, and therefore charge, that said A. McManus had been the guardian of said complainant, and was a man of good character; that they are informed that the agreement or contract was made with both George Collins and Sidney about the same time, but that it was then doubtful whether the complainant was of age, and therefore the contract with him was not then consummated, but that George, then being of full age, did consummate the contract, received the consideration expressed in said deed, and executed the same on the day it bears date; that he had a full knowledge of all the circumstances; was fully satisfied with the transaction until his death.

That after complainant became of age he was desirous to carry out the contract, and did so, and executed the deed by him signed on the day it bears date. That George and complainant were active and intelligent young men; they lived in Mobile, and had friends who were able and willing to give them information of their father's rights, and that these deeds were executed by both of them, with a knowledge of all the circumstances. That the complainant never expressed himself dissatisfied with the transaction until the filing of this bill; and where he now is these defendants do not know. He has left Mobile for many years, and has not returned, and these defendants believe that other persons are now using the name of complainant on a mere speculation, and that complainant himself does not believe that he has been injured or defrauded.

These defendants further state, that all the witnesses to the deeds are dead; and it would now be unjust at this day to permit complainant to allege fraud when it is impossible that a full and fair and perfect disclosure of the circumstances can be made. Therefore, these defendants insist on the lapse of time since the execution of the deeds, and the death of all the witnesses to the transaction, as a bar to the relief sought by this bill.

These defendants further answering deny any fraudulent suppression of the Baudain title, but allege that, inasmuch the land was conveyed by a better title, it was unnecessary and useless to have it located even if it could have been done correctly, which they deny.

These defendants further answering say and admit, that Joshua Kennedy made the contract with Joseph E. Collins and complainant, and that he paid them the consideration, and that William Kitchen had nothing to do with it. But he never spoke to the Collins on the subject; and they further admit, that the title was taken in the name of William Kitchen for the benefit of Joshua Kennedy; and these defendants have always understood and believed, that the only motive Joshua Kennedy had in taking the deeds in the name of William Kitchen was this: that James Innerarity then claimed to hold the title he was then contracting for, and he, Kennedy, was in possession, and claimed adversely to this title; and that the deeds were taken in the name of Kitchen to present the idea that Joshua Kennedy had recognised the title of Innerarity by buying from George Collins and complainant. That as complainant and George claimed to be cestuys que trusts of the title of Innerarity, and Innerarity claimed to hold the same, for the purpose of paying the debts of Joseph Collins in the first place, and as he contended that Collins owed a large amount, that Joshua Kennedy was unwilling to admit his title, and never did; was unwilling to do any act by which it might be presumed he had recognised the title of Innerarity, and thence the deeds were taken in the name of William Kitchen.

That at the time of executing the said contract the lands sued for were some marshy lands, and it required great labor and expense to render them valuable, and Joshua Kennedy wishing to reclaim them, it was desirable that all controversy about the title should be extinguished. That the lands in their then state were not of great value, and that the price paid complainant for his interest, and George for his, was a full, fair compromise price under all the circumstances. That the contract was made openly with complainant and George Collins, who *who* were in the situation to advise with their friends and guardians who knew the claim of Innerarity, of Joshua Kennedy, and the situation and value of the property at the time; and these defendants cannot see the evidence of fraud arising from the fact of taking the deeds in the name of Kitchen.

They further answering say, that after [the] execution of said deeds, that Joshua Kennedy did procure a bill to be filed in the name of William Kitchen, as assignee of the rights of George Collins and com-

plainant, to settle the amount due Innerarity. And the decree being rendered for the amount expressed in the deed from Innerarity to Kitchen, the money was paid by Joshua Kennedy, and the deed executed to Kitchen.

That this was done as these defendants are informed, merely to conform to the decree and the deeds from George Collins and complainant to William Kitchen; and thereupon William Kitchen executed the deed to Joshua Kennedy, described in complainant's bill of complaint. These defendants do not know what has become of the bill, answer, or proof. That their loss ought not to be considered as a fraud on complainant; he had no right under it, and no right of his was sought thereby to be divested; his right had passed by his deed previously executed; and if a fraud had been practised on George Collins or complainant, it is scarcely probable it was admitted by said bill or established by due proof.

These defendants further say, that Joshua Kennedy after expended large sums of *of* money in making the land sued for valuable, and rendering them fit for use. And if it is now valuable, its value is owing to the labor and money of Joshua Kennedy expended on it, and that at the time of the purchase of the claim of complainant and George Collins, and the money paid Innerarity, it was not of great value.

These defendants further answering admit, that long after these transactions Samuel Kitchen executed the deed to William Kitchen, set forth in complainant's bill of complaint. But they do not know why it was done, unless it was done at the request of Joshua Kennedy, and as a compliance with his contract with Joshua Kennedy in 1825 or 1826. That this is the reason assigned by Samuel Kitchen, and they suppose it is true.

And these defendants answering the special interrogatories say, they have none of the papers called for in their possession or control. That they have given a full and correct statement of all the circumstances under which all the deeds were made, mentioned in complainant's bill, as they can obtain by inquiry from all those of whom they are likely to derive correct information. And, in conclusion, these defendants pray leave to demur to complainant's bill, and do demur [to] the same; and for cause of demurrer they say, 1st, that the fraud as alleged in complainant's bill, is not sufficient to entitle him to relief.

2d. That it is not alleged that complainant or George Collins were infants at the time of executing their respective deeds.

3d. That the lapse of time since the execution of the deeds by complainant and George Collins is supposed to bar the relief sought by the bill, unless complainant has given some good reason for the delay.

4th. That the bill is altogether uncertain and insufficient in law to enable the complainant to obtain the relief thereby sought.

And these defendants, having fully answered, pray to be discharged with their costs.

DARGAN & LOCKWOOD,
For Defendants.

THE STATE OF ALABAMA, *Baldwin county:*

Personally appeared before me, Ward Taylor, a justice of the peace for said county and State, John H. Hastie, who being sworn, on oath says, that the facts set forth in the foregoing answers, and stated as of the knowledge of this affiant, are true; and those stated of information and belief, this affiant believes to be true.

Sworn to and subscribed this the 28th day of November, 1844.

J. H. HASTIE.

WARD TAYLOR, *J. P.*

THE STATE OF ALABAMA, *Baldwin county:*

Personally appeared before me, Ward Taylor, a justice of the peace for said county and State, Seclura Hastie, who being sworn, on oath says, that the facts set [forth] in the foregoing answer, and stated as of the knowledge of the affiant, are true; and those stated as of information and belief, this affiant believes to be true.

Sworn to and subscribed this the 28th day of November, 1844.

S. K. HASTIE.

WARD TAYLOR, *J. P.*

Answer of Hallett and Walker, executors.

In the circuit court of the United States, for the southern district of Alabama, at Mobile.

The separate answer of William R. Hallett and Robert L. Walker to the bill of complaint against them and others, filed by Sidney Eugene Collins:

These defendants, saving and reserving all matters of exception to the said complainant's bill, for answer to the same, and so much as they are advised is material, answering, say:

That they, these defendants, are the executors of the last will of Joshua Kennedy, late of Mobile, deceased; that the said Joshua died in December, 1838; that his will was immediately after proven and admitted to record in the orphan's court of Mobile county; and these defendants were duly qualified, and took upon themselves the execution of said will; all [of] which will appear by the records of said court.

That the defendants, Secluda, Mary, Clarissa, Augusta, and Joshua, are the children and heirs at law of said Joshua; and that the said Clarissa, Joshua, and Augusta are still infants; and the said respondents, Hallett and Walker, are their guardians appointed by said will. That Secluda has intermarried with John H. Hastie, Mary with Augustus R. Meslier, and Clarissa with John G. Aiken.

These defendants further answering say, that all the lands in Mobile, which the said Joshua died seized of by his said will, were devised to these defendants, as his executors, for the purposes of said will, and for the ultimate benefit of his said children, as by said will is shown; that a portion of the particular land now claimed by the complainant has passed to them, these defendants, under said will, and is now in their

possession; that portions have been, from time to time, sold and conveyed by the said Joshua Kennedy to divers persons, as by the several deeds of conveyance on record will appear; which alienees, or those holding under them, now hold such portions; and that other portions are held by the children of Joshua Kennedy, under deeds made to them by said Joshua in the year 1838, and are in possession under said deeds.

These defendants admit that Joseph E. Collins died, but not in the year 1812, as the complainant has alleged. He died, as they are informed and believe, at Pascagoula, in the summer of 1811.

These defendants admit that they have been informed that George E. Collins and Joseph Collins, jr., are also dead; that they died intestate and unmarried; but whether the complainant, Sydney Eugene Collins, be living or not, or where he is, they do not know.

These defendants do not admit that the complainant is the heir at law of Joseph E. Collins, nor that he is the heir of George Collins, nor of Joseph Collins, jr., as charged in the bill of the complainant; they on the contrary are informed and believe, and so aver the fact to be, that although he and the said George pretended to be the legitimate children and heirs of Joseph E. Collins, they in truth, as well as the said Joseph Collins, jr., were the illegitimate children of the said Joseph E. Collins by a woman with whom he lived, named Elizabeth Wilson, and to whom he never was lawfully married. And they therefore say they could take nothing by descent from the said Joseph E. Collins, and nothing by descent from each other, and were incapable of inheriting or transmitting any lands in Mobile, or right in the same. And if in anywise material, they pray that the complainant be required to make full proof that he is such heir at law as he alleges.

These defendants do not either admit that the said complainant is entitled to any thing by devise from the said Joseph E. Collins, as he has alleged; they say that no will of said Joseph E. has ever been established or admitted to probate in Mobile, but that many years after the decease of said Collins, no will having appeared, administration was granted to James Innerarity on his estate by the county court of Mobile county; and, if material, these respondents pray, that if any devise by said Joseph E. Collins be relied on by complainant, the same may be produced and fully proved.

These defendants further answer, that the said Joshua Kennedy, in his lifetime, did claim title to, and held possession of, all the said land by the complainant described, and that from the time he acquired it up to the time of his decease he always claimed it to be the property of himself, and of those to whom he conveyed portions of it.

Your respondents further shew, that the said Joshua held title to said land under a grant made by the Spanish Government to one Thomas Price in the year 1798; that this grant was confirmed by the same government to him in 1807; that the same title was also confirmed by the Government of the United States; and that a patent issued from said Government to Joshua Kennedy in the year 1837. They further say that said Price conveyed the said land to William E. Kennedy,

and that Joshua held under conveyances from said William E. Kennedy; that said Price, William E. Kennedy, and those claiming under them, have constantly held the possession of it, down to this time, under the Price title; and that neither the said Collins, nor any one claiming under him, ever did have the possession of said land, nor of any part of it, but it was always held adversely to such title.

Your respondents further answer, that the said William E. Kennedy did also have a conveyance of title to the land in controversy from one Alexander Baudain, who held a Spanish concession for the same, made in the year 1798; that said concession was for fifty perches front on Royal street; that the said title was laid before the United States Government for confirmation, and was confirmed for five perches only, instead of fifty; the location of which five perches has never been ascertained; and no location has therefore ever been made finally in the land office, and no patent has ever issued for the same.

These defendants admit, that it does appear that Joseph E. Collins did petition the Spanish government authorities for a concession of the same ground, and that informal and incipient steps were had towards the making of a grant or title for the same, as is shown by the Spanish record thereof; but the said claim, it appears, was abandoned by the said Collins, and no concession or grant was in fact made or confirmed by the Spanish government, and the claim was never recognised as valid by the United States Government; but, on being presented for confirmation by those representing the Collins title, was rejected, as is shown by the public records; and no possession appears ever to have been had by any one under the said Collins title, which indeed was void, having been made on the condition that the land should be vacant, when it was not so, and never perfected, as the Spanish regulations required.

These defendants therefore shew and answer, that the land in controversy is held under the grant made to Thomas Price by a patent made by the United States Government to Joshua Kennedy, which is a perfect and complete title, the only title fully recognised by the United States; that the said title is paramount to all others, and that the said patent is the only one which has ever issued for the said land; and that it vests the title in Joshua Kennedy and his assigns.

In relation to the averments made by the complainant of right under the articles of agreement made in 1806, and by the deed made by William E. Kennedy to James Innerarity in 1820, these defendants say they have no personal knowledge of the circumstances attending those transactions, and cannot undertake to set forth what they were in truth, nor what did occur. They have derived their knowledge of the existence of such documents by the inspection thereof, but are satisfied that their knowledge of them is very imperfect, and the persons who could explain them are no longer living. There appears to be in existence a paper, purporting to be signed by William E. Kennedy, as an agreement, but it was found in the papers and custody of Joshua Kennedy; but why or wherefore it was made, whether it was ever delivered to

Joseph E. Collins, or whether the said Joseph ever did sign such a one, or become bound thereby, or complied with it on his part, and whether it ever went into effect, or whether it was cancelled or abandoned, they do not know. They say, however, that it appears that, notwithstanding said agreement, Collins never did, during the many years of his after life, have possession as said agreement contemplated, nor take any further steps to perfect said title; that, true it is, that said William E. Kennedy did ditch and improve the land, but that no one claimed the benefit of such improvements in aid of the Collins title; and no attempt was made by any one to perfect it, and comply with the other conditions required by the Spanish government; all which is in perfect accordance with the fact that, after the date of said article, William E. Kennedy obtained the conveyance of the Price title, which was paramount, and was afterwards confirmed in 1807, whereby the Collins title became void, and seemed to have been from thence abandoned by said Collins. And these defendants deny that it was the duty of said William E. Kennedy to prosecute any claim before the Spanish or American Government to perfect that title; but say that, if it was capable of perfection, it was the duty of said Collins, in his lifetime, and of his heirs afterwards, to do so; and that being omitted, or failed in this respect, said title must yield to the Price title. They deny that said William E. Kennedy or Joshua Kennedy used any contrivance to suppress the Baudain title.

They say, on the contrary, that great exertions were made to procure its full confirmation by the American Government, and if it has not been fully confirmed, it was not by their procurement or design, but against their will; they deny, further, that the said William E. or Joshua ever used any contrivance to prevent the confirmation of the Collins title in any manner whatsoever.

They further say, that there also appears a deed made by William E. Kennedy to James Innerarity of a special and unusual description, as the complainant has exhibited, by which the right under Collins title, whatever it might be, was transferred to said Innerarity as administrator, and to such persons to whom he might convey at a sale under an order of court. It further appears that this deed was made subsequently to one made to Samuel Kitchen, by which all the title under the Baudain claim had been conveyed by said William E. to said Kitchen, with all the right which might be acquired under a confirmation of the Baudain claim, from which it would seem that it was the Collins claim which was attempted to be specially and separately conveyed to said Innerarity, and for the special purpose of being sold under an order of court for what it might be worth, disconnected from the other title or claim said William E. Kennedy held.

These defendants do not admit that the said William E. Kennedy did recognise the title of Collins as effectual to hold any portion of said land, nor that he could bind that of the said Samuel Kitchen thereby, nor that he did admit that the said article of agreement was obligatory, either in favor of the heirs of Collins nor of his administrators; they say

that no possession passed under said deed. They are, on the contrary, informed, and believe, that, at the time of making said deed, said William E. did deny that the Collins title was of any value, and insisted that it had failed, and was superseded by paramount title; and they are informed that the possession was then held adversely by Kitchen. They further answer, that it appears a large debt was due from said Joseph E. Collins at the time of his death to the firm of John Forbes & Co., of which said Innerarity was a partner; that said debt being still unpaid, after the lapse of many years, without any will appearing, the said Innerarity applied to the county court for administration on said estate, which was granted to him in Mobile in 1819; and that, in the absence of other means of payment, he sought to obtain it by the sale of the Collins right to said land. It further appears that said Innerarity filed a petition in the orphan's court, praying an order of sale of the lands of said Collins, but the said deed being obtained, no further steps appear to have been taken to obtain such sale. But so far as the records disclose the facts said Innerarity appears, after having obtained the deed, to have ceased in his proceedings to obtain an order from the county court for the sale of Collins' rights to the land, and departing also from what would seem to have been contemplated by the deed to him, claimed to recover the possession of the land itself against the title made to Samuel Kitchen. But whether the said deed to Innerarity was made to enable him to obtain payment of his debt, or to separate the claim so that it might be presented at the land office, or as a special compromise with him, or under what particular circumstances, *that* cannot say.

They, however, refer to the facts above stated, and the special form of the deed itself, to show that it was a special transaction, and not a recognition of a title in Collins' heirs, for the benefit of the complainant as he alleges.

These defendants admit that William E. Kennedy did make a deed of conveyance of said land to Samuel Kitchen; they deny that said deed was antedated. They have no knowledge that such was the fact, and are informed that it was not. They are informed and believe that said William E. Kennedy did, in fact, sell said land to said Samuel Kitchen at the time said deed bears date, for the sum mentioned in said deed; that said Joshua owed said Kitchen a larger amount than the price of said land; and that, when the purchase was made by said Samuel Kitchen, said Joshua agreed to settle with William E. Kennedy for the purchase money, and Kitchen agreed that such assumption should be so much in deduction of the amount due by Joshua to said Kitchen; that the transaction was carried out by Joshua settling for it, and the amount was allowed by said Samuel Kitchen in his claim against Joshua; and therefore they say that said Samuel Kitchen did pay for it with his own means and for his own use.

They further answer and say, that Samuel Kitchen went into possession under his said purchase, and made improvements on the land, and held it until October, 1825, when, as it appears, said Joshua purchased it from said Samuel Kitchen, with the exception of a lot of sixty feet,

and said Kitchen then gave him a written obligation to convey it; that after this agreement the possession was still held by said Samuel Kitchen for a time, and also by said Samuel and Joshua both; and thus it remained till the transaction was closed, in 1834, by the making of a deed by said Samuel to William Kitchen; which deed said Samuel made at the request of Joshua Kennedy, and for his benefit, in fulfilment of his (Kitchen's) agreement; and in which deed, by some arrangement between the parties, the reserved lot of sixty feet was also included; and that thus, and by this purchase from Samuel Kitchen, said Joshua acquired the title which said William E. had conveyed to said Samuel, and not otherwise; that said Samuel never made any deed to said Joshua, but only the agreement in October, 1825, and the deed to William Kitchen in pursuance thereto, as before stated.

That although the said lands so deeded were conveyed to William Kitchen for the benefit of Joshua Kennedy, it seems to have been the intention of the parties that William Kitchen should derive some benefit from said deed by a free gift to him, either of the reserved lot or the equivalent, promised by said Joshua therefor at his, said Joshua's, discretion; and, in accordance therewith, the said Joshua did, after the making of said deed, convey to William Kitchen a lot of land of equal or superior value to that formerly reserved, situated in the northern half of the supposed location of the Baudain tract, on the corner of Water and State streets, for which the said Kitchen paid nothing, although the deed expresses a consideration of $10,000.

But these respondents further answering shew that, be the right under the Collins title, or under the agreement of 1806, or the deed of 1820, what it may, that all title which could be pretended thereby, either under Innerarity or by the complainant, as heir of Collins, has been fully extinguished by the conveyances of said James Innerarity, and of said George Collins, and of Sydney E. Collins, the complainant himself, made to William Kitchen, who afterwards conveyed to Joshua Kennedy, so that said Joshua held the title free from all such claims, as will appear by the several deeds herewith referred to, the originals of which are in these defendants' possession ready to be produced.

These defendants shew that when the said Innerarity, instead of selling the title he had acquired under an order of court, claimed the possession of the land, and in , 1827, he commenced suit in the circuit court of Mobile county against Joshua Kennedy to recover said land under his deed; that Samuel Kitchen was made a defendant to this suit, the legal title being in him at that time, and he being still in possession, and the deed of Innerarity was resisted. At February term, 1828, the court rejected said deed, when offered in evidence, as conferring no title on Innerarity, and gave judgment for the defendant. The plaintiff appealed, and at July term, 1829, the Supreme Court reversed the judgment, and remanded the case; but it does not appear that said Innerarity ever did recover in said action, nor in any other way. The case remained on the docket after the reversal, but it does not appear that it was ever tried again.

And these defendants further shew, that, pending this controversy, the said Joshua Kennedy did compromise with the said George E. Collins and Sydney E. Collins, concerning all the claim which they might have, or pretend to said land, they representing themselves to be the heirs of Joseph E. Collins and of Joseph Collins, jr., and did purchase of them their release of all their claims, respectively, for the sum of one thousand dollars each; which amount they respectively received of Joshua Kennedy, and ever since have retained and applied to their own use, for which they each executed a deed of quit claim in favor of William Kitchen, as by their said deeds will appear; which deeds were taken by said Joshua in William Kitchen's name, but for the use of said Joshua. They further say, that the said James Innerarity did afterwards also convey to said William Kitchen all his interest and legal title to said land, in consideration of the sum of two thousand two hundred and thirty-three dollars and twenty-two cents, paid to him by said William Kitchen, which was the amount of the debt due to him by Collins' estate, as by his deed will appear. They say that this last deed was made under a decree on a bill filed in the Mobile chancery court by said William Kitchen against said Innerarity, and which decree commanded him to make such deed. These defendants are not informed what were the particular grounds of said decree, nor have they any paper belonging to said suit, and have no knowledge, if they be lost, how such loss occurred, nor how they were withdrawn, nor who were the parties to said suit, but rely on the same, and pray they may be referred to if found; but they are informed the money was furnished by Joshua Kennedy, and that the title was made to William Kitchen for his use and benefit.

Further answering these defendants say, they deny that the said deeds, made by George E. Collins, and Sydney E. Collins, and James Innerarity, were void or obtained by fraud in any manner, and they deny that the said George and Sydney Collins were under the age of twenty-one years when they were respectively made, but insist that they are of full validity and binding on the complainant. They are informed and believe, and allege the fact to be, that the said George E. Collins was of full age when he made his deed, and that said complainant was of full age when he executed his, and that they did represent themselves respectively to be so when they made them, and received the price; they deny that said Sydney was born in 1810, and consider the allegation in the bill made, that he was so informed and so believed, to be fraudulent and false; and they say if any fraud was committed in said transaction, it could not be other in their belief, than that they claimed they were the heirs of Collins when it seems they were not. These respondents are informed that the contract was made with them both; and that inasmuch as the said Sydney represented himself as not then being of full age, the completion of the compromise with him was delayed till the time after he was of full age as represented, and his deed was made and payment was made to him after he was of full age, and hence the different date of the two deeds.

These defendants deny that any fraud or false representations were made to obtain such deeds; they have no knowledge of any such, and consider such allegations as made with very ill grace, and as subject to every imputation of bad faith, when made at this late day, and after the death of Joshua Kennedy and the material witnesses to the transactions. That the deeds were written one by Edwin Lewis, and the other by John A. Stewart, as they believe, who are both dead.

That said Lewis was a subscribing witness to the deed made by George Collins; that he was an attorney at law, who well knew the parties, and had been the guardian of said George, and who himself proved the deed. That to the deed made by the complainant, A. McManus was a witness, who was also a man of character, and had been a member of the Legislature of Mississippi, and had been the guardian of said complainant. That full time was had after the deed made by George was executed to consider the terms before the complainant completed his contract, more than one year having elapsed, and while a controversy was pending in court with James Innerarity on the very subject.

These defendants deny that the value of the complainant's rights were such as he pretends, and they insist that more than the value was given for the rights of Collins, and that in any event whatever the price of $4,233 $\frac{22}{100}$ was a fair compensation and compromise price at that time for the Collins claim, had it even been a good but disputed title. These defendants shew that at that time there was no absolute certainty of any title proving effectual for said land; that the title of Price was confirmed, it was true, but its location was not then settled; that a controversy was pending in the land office for a long time, even after 1830, in which it was contended that it covered no part of the ground now sued for; that the Baudain title was confirmed only for five perches, and not located finally and not patented, and the Collins title stood upon the records as absolutely void; so that, in fact, said sum was paid at the hazard of the loss of the whole of it if the title failed, and that it was only in 1837 that any complete title was obtained for said land, and that was procured by the labors of Joshua Kennedy to establish the Price title, in which the Collins never had any interest or equity.

And these defendants further shew, that by the public records it appears that, at the time of the purchase or compromise made between the said Joshua Kennedy and said George and Sydney Collins, the said land was claimed by William H. Robertson and William Barnewall, adversely to the right of all parties. It appears that, under the provisions of an act passed in 1819, the corporation of Mobile, on the 8th of March, 1820, laid a tax on lands in Mobile; that by reason of the registry of the deed from William E. Kennedy to James Innerarity, or by some other means, the land in controversy was assessed to the heirs of Joseph Collins, and that, on the 10th January, 1821, the same was sold by the corporation of Mobile for non-payment of the taxes, and purchased by Robertson & Barnewall for $65; and that, on the 30th April, 1821, a deed for the same was made by the mayor of Mobile to Robertson & Barnewall as purchasers.

That Robertson & Barnewall sued Joshua Kennedy in January, 1826, for the land; that Samuel Kitchen, in May, 1826, appeared and confessed having the possession, and was made a defendant; and that, at the spring term, 1826, of the court, a verdict was given against Robertson & Barnewall; that they appealed; and that, at the July term, 1827, the judgment for the defendants was reversed by the supreme court and the cause was remanded; and that, at the time of the sale and release, made by the said Collins of their rights, the said suit was still pending in the Mobile circuit court and undetermined; so that, it seems, that at the time they conveyed to William Kitchen, the said land was claimed adversely to the rights of said Collins, as is shewn by the public records, and their suit was still pending to recover it, and was not finally decided by the court till December, 1830.

They further say, that the Collins title was void, and abandoned by those claiming an interest in it; received no attention from them, and no pains nor expense were used by them to perfect it; no taxes were paid by them; and that said property has been made valuable by Joshua Kennedy at an immense expenditure of money in filling up the ground, in making streets, wharves, in valuable improvements, buying out and defending adverse claims, and by great perseverance, pains, and expense, for many years, in nursing the title, and protecting it from many attacks; towards all of which those representing the Collins title did nothing whatever, and deserved none of the benefits.

These defendants further answering say, that, since the making of said deeds, the said George E. Collins did always, up to the time of his death, acquiesce in the same, and never, that they have ever learned, evinced the least disposition to elect to avoid it; that his whole course of conduct was that of a perfect quiescence; that he retained the consideration money, and never, that they have heard, expressed any dissatisfaction whatever.

They further say, that said George was in Mobile after the transaction; that he came there expressly to look up and settle his claims under his father, as well for himself as under a power of attorney from the complainant; that he informed himself, and appeared to be well acquainted with his father's landed affairs, and that, so far from shewing any disposition to avoid, or dissatisfaction with what Innerarity or himself and Sidney had done, he settled several other land claims in the same way, and sold to Joshua Kennedy other claims for himself and brother; and among others, in 1834, made a deed for a similar claim under another article of agreement, made in 1806, for half of another piece of land, and received two thousand dollars more for himself and brother.

Your respondents also shew, that during the fourteen years after the making of said deed, up to the filing of this bill, the said complainant himself has, in like manner, constantly acquiesced in the said transaction, which was all the time well known to him, and never, that they have heard, expressed the least dissent, retaining the consideration, and making no claim; and they never have heard of any, save the filing of

this bill; and whether, in fact, said complainant himself has sought to avoid this deed, or whether others in his name have done so under some contract with him; and for speculation, these respondents have no knowledge, except by the bill *bill* itself, as said complainant never has presented himself, made no personal application to them, nor made himself or his claims otherwise known to these defendants. But they submit whether it is now competent, after the death of said George, of said Joshua, and after this great length of time of acquiescence, to avoid those two deeds, either under the pretext of non-age, or of fraudulent representations as to the value of their rights, and now only elect to consider the said deeds void.

These defendants deny that Joshua Kennedy, their testator, did make such contrivances to defraud the complainant, as he alleges; they admit that he did exert himself to procure the confirmation of the Price title, and also to procure its location, according to the terms of the grant; they admit that, as located, it does cover every portion of the pretended "Collins claim," as well as a great part of what was claimed to be included in the Baudain grant; but they say that this was, so far as the north line is concerned, in opposition to the protest of said Joshua. And they further state, that the exertions of said Joshua to get a confirmation and trust location of the said Price title, was not to defraud the complainant, but because it was the good and superior title, and covered other lands than that embraced in the complainant's bill, of great value. And they further say, that the location, as made by the Government, so far as concerns the lands sued for, is the proper one, and the same as made in the Spanish times, and as surveyed by Joseph E. Collins himself, under the order of Pintado, the surveyor general. They admit that, in 1824, William E. Kennedy did convey all his interest in the Price title, which covered a large tract of land, to said Joshua, and that said deed was for the consideration of $10,200, paid for all the title of said William.

They admit that a decree has, since the death of said Joshua, been made, declaring that one half of certain lands were held in trust for the heirs of William E. Kennedy, but they consider said trust rests only in the decree, as they are not convinced there ever in fact was such a trust; that Joshua did not so consider it, and they never learned that William E. Kennedy did, and they never have seen any sufficient evidence to convince them that there was any such trust; but they submit that such question is in no wise material to this controversy in any manner, and allege that the lands claimed by complainant are not embraced in, or affected by, said decree.

They admit that, in said suit, the said Samuel Kitchen did make a deposition, in which the conveyance to him by William E. Kennedy is mentioned. What that deposition was will appear by the deposition itself, if in any way material; but they insist they are in no manner bound by any thing such a deposition may contain, whether erroneously written or really deposed to; that the said Samuel Kitchen is still living, and competent to depose the truth, if material; and, therefore,

whether said Samuel did make such deposition, or what he did depose, is of no consequence; that he had conveyed all title long before. They beg leave, however, to remark, that it is only by giving a false and forced construction to said deposition, and by laying stress upon the question instead of the answer of Samuel Kitchen, that it can be made to mean what the complainant alleges.

These defendants admit that William Kitchen did convey to Joshua Kennedy; these defendants know of no deed from Samuel Kitchen to Joshua Kennedy, but Samuel Kitchen conveyed to William Kitchen, and neither of them claim any interest in the land now sued for, and the whole right and title was vested in Joshua Kennedy, by the patent of the United States Government to the same in 1837; and no other deed or title is of any avail against it, as these defendants are advised.

These defendants do not admit that there was any contrivance, by any of the parties concerned in said transactions, to defraud the complainant or his brothers; and, if any such contrivance there was, they pray it may be established by proof, and not by mere surmise, nor by the perversion of innocent acts done for other purposes and objects. They cannot positively say what was the motive which induced said Joshua to take the title in the name of William Kitchen, but they are informed he very frequently did this, so as not to mix different titles together, for convenience in the land office; and that he often appeared to act as if he had an objection to receiving a deed of an adverse title to himself, under an idea that he was thereby recognising it. But, be this as it may, they insist that taking the title in the name of William Kitchen cannot be held, as against the complainant, as either secret or fraudulent, as it is the act of the complainant himself to have made it to said William Kitchen.

These defendants presume that rents and profits were received by the said Joshua Kennedy, in his lifetime, arising out of said property, but they insist that the proceeds have been very small, and that the expenditures for perfecting the title, for filling up under the compulsory power of the city authorities, the making of streets, taxes, &c., as well as sums expended for valuable and permanent improvements, and expenses of law suits, made in good faith, have amounted to an enormous sum, far exceeding the rents and profits.

They further say, that the rents and profits received by these defendants are inconsiderable, and that they also have made expenditures for the same. They further say, that all claim for rents from the said Joshua are barred, as they are advised, and that no claim was made of them within eighteen months after letters testamentary issued; that they duly advertised, requiring all claims to be presented, and that said term has since fully elapsed.

These defendants admit they are in possession of the paper evidencing the title of Alexander Baudain and of Thomas Price; they say, however, they are of record, and can be referred to and inspected by the complainant and all others; and they refer to the public records for

them, and do not feel bound to produce and file them, unless the court shall so expressly order.

These defendants are ready to produce the different deeds in their possession, from James Innerarity to William Kitchen, and from the complainant and George Collins to said William Kitchen, and from William Kitchen to said Joshua; and they insist that, by said deeds, even if said Joseph E. Collins had ever any title to the premises which was available, it would have been divested, and would have passed to said Joshua Kennedy.

These defendants submit, that the complainant is not entitled to any relief by reason of anything in his said bill contained, and pray the benefit of this objection, by way of plea and demurrer to said bill, as well as answer; and, for cause of demurrer to said bill, they allege and specify that the same is not filed in a reasonable time, such as will induce a court of chancery to open and vacate a deed made and acquiesced in after such lapse of time; that the causes set forth in excuse for such delay are not sufficient, nor available to excuse such delay; that so much of said bill as seeks to recover the land cannot be maintained, because more than twenty years have elapsed since the right, if any, hath accrued; that the infancy of the said complainant, and his brother George, are not sufficiently charged to vacate their deeds on the ground of infancy; that the fraud alleged is not sufficiently charged, in not specifying in what the false representations were; that the fraud cannot now, after the death of Joshua Kennedy, be investigated after such lapse of time, nor after the death of George Collins, when never pretended during his lifetime, nor can the infancy of the said George, for the same causes.

All which, and other causes of demurrer on the face of the bill, they pray the benefit of by way of defence to said bill, and also by way of plea, so far as the same are available.

And these defendants having fully answered, as they are advised, all which is material to be answered unto in this behalf, pray to be hence dismissed, with their reasonable costs in this behalf expended.

STEWART & EASTON,
Solicitors pro Respondents.

William R. Hallett and Robert L. Walker, two of the defendants in the cause hereinbefore described, being duly sworn, depose and say, that the facts and circumstances in the foregoing answer set forth, so far as they are stated as of their own knowledge, are true; and so far as stated from information and belief, they believe to be true.

W. R. HALLETT, *Executor.*
R. L. WALKER, *Executor.*

Sworn and subscribed to before me, January 11th, 1845.
SIDNEY T. DOUGLASS, *J. P.*

Answer of John G. Aikin and Clarissa Aikin.

In the circuit court of the United States, for the southern district of Alabama, at Mobile.

The answer of John G. Aikin and Clariss, his wife, late Clarisa Kennedy, to the bill of complaint filed against them and others in said court by Sidney E. Collins.

These defendants, saving and reserving all matters of exception to the said complainant's bill, for answer to the same, and so much thereof as they are advised is material for them to answer, answering say, that they admit that William R. Hallet and Robert L Walker are executors of the last will and testament of Joshua Kennedy, late of Mobile, deceased, who died in December, 1838; that they have duly proved said will, and taken upon themselves the execution thereof; that the defendants, Seclusa, Mary, Clarisa, Joshua, and Augusta, are the children and heirs-at-law of said Joshua Kennedy; that said Clarisa, Joshua, and Augusta are still infants, under the age of twenty-one years; that said Hallet and Walker are the guardians of said infants, appointed by said will, and *and* have qualified as such; that Seclusa has intermarried with John H. Hastie, Mary with Augustus R. Meslier, and Clarisa, since the filing of said bill, with John G. Aikin.

These defendants further answering say, that all the lands which said Joshua Kennedy died seized of in Mobile, were by his will devised to his said executors for the purposes in said will expressed, and for the ultimate benefit of his children; that a portion of the land claimed by the complainant was conveyed by Joshua Kennedy, in his lifetime, to sundry persons; that a portion thereof was deeded by him to his children, in December, 1838, who by themselves as guardians are now in possession of the parts respectively allotted in a partition of the same, made according to law, which proceeding is of record; and of so much thereof as has not been so divided as tenants in common; and that the rest of said land, not so conveyed or deeded by said Joshua, is held by his said executors under his will.

These defendants further answering say, they have never at any time had any acquaintance with, or knowledge of, the complainant or his brothers, George and Joseph, mentioned in the bill; nor do they know whether his said brothers are yet living or dead, or, if dead, whether they died unmarried and intestate; and pray that the same, if material, may be established by strict proof; but these defendants deny that the complainant is the heir-at-law of his said brothers, or either of them, or of the said Joseph E. Collins, because they say they have been informed, and believe, that the said complainant, and George and Joseph Collins, jun., were the illegitimate children of one Elizabeth Wilson, to whom the said Joseph E. Collins, their reputed father, was never lawfully married, and therefore incapable of taking the said lands, by descent, from the said Joseph E. Collins, or by inheritance from each other; and pray that, if deemed material, the complainant be required to produce strict legal proof that he is such heir-at-law as he alleges; nor do these

defendants admit that the complainant is entitled to any thing by devise from the said Joseph E. Collins; they say that no will or devise of said Joseph E. Collins *was* ever, so far as they can discover, been established or admitted to probate in Mobile, although said Collins died in the summer of 1811, as defendants are informed; and that many years after his death, to wit, in 1819, administration was granted by the orphan's court of Mobile county to James Innerarity, on the estate of said Collins as an intestate; and said administration, so far as they can learn, has never been revoked up to this time, nor has any one interfered with it as executor of said Collins, or otherwise, by reason of any will or devise pretended to be made by him; and they further say, they have never heard of any devise being made by said Joseph E. Collins until the filing of the complainant's bill; and, if material, these defendants pray that, if any devise by said Jos. E. Collins be relied on by the complainant, the same may be produced and fully proved.

These defendants further answering say, that Joseph Kennedy in his lifetime did claim title to, and hold possession of, the land by the complainant described; that from the time he acquired it, up to the time of his death, he constantly claimed it to be the property of himself, and of those *and of those* to whom he had conveyed portions of it. They say that Joshua Kennedy held title to said land under a grant made by the Spanish government to Thomas Price in 1798, afterwards confirmed to him by the same government in 1807; that said Price conveyed said land to Wm. E. Kennedy, and that Wm. E. Kennedy conveyed it to Joshua Kennedy, and that the Government of the U. States confirmed said grant to Joshua Kennedy, as the legal assignee of the Price title, and caused a patent to be issued to him thereof, in the year 1837; that from the time of the grant to Thomas Price, as aforesaid, up to the present time, the said lands have been constantly held, possessed, and claimed by said Price, Wm. E. Kennedy, Joshua Kennedy, and those claiming by conveyance from them, under and by virtue of the said Price title, and adversely to the pretended claim of said Collins; that neither the said Joseph E. Collins, by virtue of the Spanish permit to him, or the alleged articles of agreement said to have been issued unto him and Wm. E. Kennedy, nor any one claiming under him, nor the said James Innerarity, by virtue of his deed from Wm. E. Kennedy, as these defendants are informed and believe, nor did have possession of any part of said lands, but that the possession of the whole of said lands has always remained from the accrual of the Price title to the *to the* present time, with the said Price and his assignees, as aforesaid, adversely to the claim of the complainant, whether the same be founded on the so called Collins title, the articles of agreement, or the deed from Wm. E. Kennedy to Jas. Innerarity, his administrator; that the possession of the land by Wm. E. Kennedy, was in nowise for the benefit of the said Collins, whose claim he contended was superseded by the Price title, but to secure and perfect the said Price title in which said Collins had no interest or concern; and they further say, that the Price title covers this land because it is the proper and rightful location, according

to the terms of the grant as ascertained by public authority, and so far as concerns this land, the same as made in the Spanish times, and as then surveyed by Joseph E. Collins himself, under the orders of Pintado, the surveyor general, and not by reason of any fraudulent procurement of the said Joshua Kennedy; and they further allege that it is paramount to all other titles, as they are advised and believe, being the only one which has been perfected to the said land. These defendants admit it does appear from the public records that Joseph E. Collins did petition the Spanish government for these lands, and that some preliminary steps were taken towards the making of a grant to him; but they allege, as advised, that the permit issued to Collins, founded on his petition, was void from the first, and incapable of being matured into a title, being made on condition that the land petitioned for should be vacant at the time, when in fact it was not so; that nothing was done by Collins in compliance with the other terms and conditions of the permit to him, and the same appears to have been abandoned by him; that no concession, grant, or confirmation was made to him by the Spanish government, and that his claim was totally rejected by the Government of the United States when presented by those representing it; these defendants deny that it was the duty of either Wm. E. or Joshua Kennedy to do any act or lend any aid towards perfecting the Collins title, or that they did anything to prevent its confirmation; they insist that it manifestly appears to have been void, wanting in every important essential, even of an inchoate title, incapable of being perfected, and such as can hardly be supposed to have awakened the jealous fears of any claimant to the same land, however slender his pretensions may have been; the defendants also deny, that either William E. or Joshua Kennedy used any contrivance or device to suppress or prejudice the Baudain title; they say that, on the contrary, they are informed and believe, that great exertions were made, especially by Joshua, to have it fully confirmed; that he labored long and diligently for this purpose, and could not procure its confirmation, save for five perches only, the location of which five perches has never yet been made or ascertained.

These defendants further answering say, that they know nothing of the grants of the Spanish government to Thomas Price and Alexander Baudain, save from public records; that they have not the same in their possession, nor have they in possession any of the deeds or instruments of writing, referred to by the complainant's bill, nor do they know ought of the circumstances under which they were executed, save from information. They state, however, from the best information they can obtain, and which they fully believe, that the deed from Wm. E. Kennedy to Samuel Kitchen, was the consummation of a purchase made by the latter from the former in good faith, of the lands described in said deed, for the consideration therein expressed, and for his own use, *and with his own use*, and with his own funds, and that the deed was made at the time it bears date; they deny that said deed was antedated, or was a pretence to cover any contrivance of Joshua Kennedy to defraud the complainant and his brother, or other illegal object, or that

said deed was at all procured to be made by Joshua Kennedy; on the contrary, they have been informed and believe, and so allege the fact to be, that Joshua Kennedy had no concern in, or connection with, said transactions, except in enabling or assisting said Kitchen to arrange the payment for the land, and that he never acquired any interest in said Kitchen's purchase, until in the fall of 1825, after he had become the purchaser of the Price title, which covered said land, and they became interested to extinguish any and all outstanding claims upon it; that in accordance with said purchase, so made in good faith for his own benefit, said Kitchen went into possession of the land on obtaining the deed for it, made improvements on it, and occupied it alone for several years; that in 1825, Joshua Kennedy having succeeded to the Price title, bargained with him for his interest, and took from him an obligation to convey in a specified time, reserving a small portion; that after this agreement said Kitchen continued in the sole possession for a time, and afterwards it was held both by him and Joshua, and it was thus held until said Kitchen, in the year 1834, perfected his conveyance by making a deed for the land to Wm. Kitchen at Joshua's request, the said William having previous to that time received for the benefit of said Joshua deeds from George Collins and Sydney, the complainant, and from James Innerarity, administrator, for all their respective interests; in which final deed to Wm. Kitchen by said Samuel, the reserved lots were included by a separate contract of sale then made between the parties.

And these defendants further answering say, as advised, that the pretended Collins title was void, and they insist that the complainant can claim nothing by virtue of the deed from Wm. E. Kennedy to James Innerarity, because the same land had been previously conveyed by said William to Samuel Kitchen, and was then held adversely by him; and that by the terms and just construction of said deed to Innerarity, it is a special conveyance for special purposes, and its clauses of warranty special, and dependent upon conditions which have altogether failed without the fault, and against the will and persevering exertions of the said William and the said Joshua, and are imperative to cloy a superior and paramount title to the same land acquired by either of them; which paramount title owes none of its validity to any of the considerations expressed or contemplated in the said deed to Innerarity, or the articles of agreement thereto appended, is not coupled with the Collins title, either in contract or in equity, and of which Joshua Kennedy himself procured the confirmation by his own labors and at his own cost, after the Collins title had been utterly rejected, and the Baudain title, though urgently pressed by him, had failed to be confirmed, save for five perches only. These defendants say that no possession passed under the deed to Innerarity, and they are informed the possession was then adversely held by Kitchen; they do not admit that Wm. E. Kennedy did recognise the title of Collins as effectual to hold any portion of the said land, nor that he could bind the title of said Kitchen by said deed, nor that he did admit that the said article of agreement was obligatory in favor either

of the heirs of Collins or his administrator; on the contrary, they are informed and believe, that at the time of making said deed he did deny that the Collins title was of any value, and insisted that it had failed and been superseded by paramount title; and the defendants refer to the fact, and they allege it to be so, that Innerarity obtained this deed from Wm. E. Kennedy, either for none or a nominal consideration for his own use, and to enable him to procure the payment of his debt from Joseph E. Collins, deceased, and without any consideration moving from the heirs of Collins as elucidating the intentions of the parties as to what interest or estate was designed to be conveyed by said deed. These defendants do not know, nor can they admit, that the article of agreement appended to said [deed] was ever executed or recognised by said Collins, or delivered to or held by him, or that he acknowledged himself bound thereby, nor whether, if ever, of force, it was not abandoned by him, and pray that, if deemed material, the same may be fully prove. And these defendants further answering say, that from the best information they can obtain from those who knew the complainant and George Collins when they were children, it is untrue that either of them was under the age of twenty-one years at the dates of the respective deeds to William Kitchen, and allege, as informed, that they then severally represented themselves to be of full age, and in fact were so, and deem the allegation by this complainant that he has been informed to the contrary as made in bad faith; the defendants are informed, and believe, that said George and Sidney did sell their respective interests by them claimed in the land to Joshua Kennedy for one thousand dollars each, which sums were paid them with the full knowledge and approval of their friends and guardians, who were men of much intelligence, high standing, and respectability; that the contract was made with them by Joshua Kennedy himself, openly and not through William Kitchen as his agent; that their said guardians, by whose counsel they acted, had a very thorough knowledge of their father's affairs; that Joshua Kennedy made use of no artifice, false representation, or concealment, to induce the execution of said deeds; that he took said deeds in the name of William Kitchen for his own benefit, which the said George and Sidney well knew. And these defendants cannot conceive how the form of the deed, so taken by Joshua Kennedy after the trade was made, could mislead them as to the value of their supposed rights; the only reason they have heard assigned for his so taking the deeds, and which *and which* they believe to be the true one, is, that after extinguishing their titles as heirs of Collins, he had still to contend with Innerarity, the administrator, in a suit founded on the Collins title, which was then pending, and that he supposed receiving a deed from them directly to himself might be construed into a recognition of that title, and give Innerarity some advantage over him, which he was anxious to avoid; the suit between them having been waged and contested for some time with much zeal, feeling, and pertinacity on both sides. The defendants are the more persuaded this was the fact from the known habit of Joshua Kennedy when he was buying out or quieting adversary claims, of taking the deed in the name of some

other person for similar reasons, several instances of which these defendants are able to specify and establish, but for the present merely refer to those stated in the answer of Wm. Kitchen on file, and in which there could be no motive to *to* mislead the party he was dealing with; nor has there been any imputation or pretence thereof.

These defendants further say, that after the making of said deeds from George Collins and the complainant to William Kitchen, by which all their title was conveyed, a bill was filed in the circuit court of Mobile, then exercising chancery jurisdiction, by said William Kitchen, or by Joshua Kennedy in his name, to compel James Innerarity, the administrator, to make conveyance of said land upon the payment of the debt due from Joseph E. Collins to Innerarity, it being, as it appears, the only debt presented against said estate; that a decree was made in the cause, directing said administrator to convey, and that in obedience to said decree James Innerarity, administrator, did convey said land to William Kitchen, for the sum of $2,233 22, (the amount of said debt,) which money was paid by Joshua Kennedy, and the land was afterwards conveyed by William Kitchen to said Joshua. These defendants cannot say what were the particular grounds on which the court provided in making decree, as the papers and all depositions of file in said cause appear to be lost, nor whom were the parties to the suit, except said Kitchen and Innerarity; but they insist that the circuit court of Mobile, as a chancery court, had then full jurisdiction of the matter, and was competent to make the decree it did, and that said decree is effectual and conclusive, until duly reversed on appeal. These defendants admit, that the chancery court of Mobile did decree that certain lands purchased by Joshua Kennedy by deed absolute from William E. Kennedy, were held by him in trust for certain purposes as expressed in said decree; but they allege, as above, that they are in no wise bound by said decree; they have never believed that there ever was in fact any such trust; they have never assented to said decree, or by any act impaired their right to impeach said decree; that one of these defendants was no party to said suit, and the other was at the rendition of the decree, and still is, an infant under the age of twenty-one years, and incapable of being concluded thereby. They further allege that the trust, as declared by said decree, does not extend to the lands claimed by the complainant. These defendants admit, that in the said suit Samuel Kitchen made a deposition in which the deed from William E. Kennedy to him is mentioned; they believe, however, that the complainant has given a forced and unauthorized construction to said deposition, which will be apparent from the deposition itself, but however this may be, they insist that the same is in no wise material to this suit, because they say that Samuel Kitchen is still living to answer for himself to explain his own acts, and to discover truly according to the fact as by the complainant in the prayer of his bill is demanded.

These defendants further answering say, that the sums paid by Joshua Kennedy to George Collins and the complainant and to James Inerarity, amounting in the aggregate to $4,233 22, for the Collins

claim was a full and fair compromise price at the time for a disputed title, and that the sums paid by him to George and the complainant, amounting to $2000, was a full and fair price for any contingent or resulting interest they might have had in said land as the heirs of Joseph E. Collins; that at the time of the said purchases from George and Sidney, the same land was claimed by Robertson and Barnwell adversely to all parties, as appears by the public records, and the supreme court of Alabama had *them* recently made a decision on some point favorable to Robertson and Barnwell's suit, which had been previously brought to recover this land, and was still pending; and that the suit of Inerarity for said land was also still pending; that the claims of Inerarity on said land were prior in law to those of the heirs of Collins, and said land, if recovered by him, was chargeable with the debts of Joseph E. Collins before his heirs would have any interest in it, and that it could not then be certainly known that it would ever pay said debts; that there was not then a final confirmation of any title to said land, and the transaction appears to have proceeded upon a calculation made by each one for himself of the value of the contingency he was buying or selling; and certainly, as it appears to these defendants, it was the part of Joshua Kennedy, (one of great risk,) as he had after extinguishing these claims still to contend with Robertson and Barnwell and James Inerarity, and though successful against these both, would still have lost the whole, unless the Price title should be fully and finally confirmed; and the defendants all believe that the land at the time *seen* had the title been undisputed, was not of great value; that it was low and marshy, and frequently, if not commonly, covered with water; and that whatever its present value may be, it is owing to the unexpected growth of the city in that direction, and to the labors of Joshua Kennedy in filling up and improving the land and rendering it fit for use. They have been informed and believe, that the money expended by Joshua Kennedy upon this land, since the making of the deeds of George Collins and the complainant and James Inerarity, in filling it up, raising it above the influx of the tide, improving it and defending it against law suits and adverse claims, amounts to an enormous sum, and that much expense was unavoidably incurred in the various steps necessary to perfect the title; to all which the said complainant contributed nothing, nor did the pretended title he had sold to said Kennedy afford any aid; wherefore, they say, that in equity and good conscience he can claim none of the fruits thereof. These defendants deny that in the transactions, as set forth in the complainant's bill, there was any contrivance of any of the parties concerned therein to defraud the complainant or his brother; they allege that, on the contrary, from all they can learn, said transactions were altogether fair and open; that both George Collins and the complainant have constantly acquiesced in the sales made by them, the said George, until his death, (if he be dead,) and the complainant, up to the filing of his bill, never complaining or offering to rescind said contracts, or to return the purchase money; and these defendants cannot persuade themselves that the complainant ever

did feel any dissatisfaction therewith, or at any time credited the various allegations of fraud put forth in his name in the bill filed; on the contrary, they are informed and believe, said suit has been brought in the complainant's name by others upon speculation on some permission obtained from the complainant in his lifetime, who himself never knew or suspected any of the matters in said bill charged, or cared to inquire into the same. And these defendants submit, whether, after the great lapse of time since the transactions took place, and the continued acquiescence of the parties, when of full age, and after the death of all the witnesses thereto, and of George Collins, as in the complainant's bill alleged, it is now competent for a court of equity to inquire into the same.

And these defendants further allege, by way of plea as well as answer to said bill filed in the name of Sidney Eugene Collins, wherein it is stated that the said Sidney was at the time of the filing of said bill a citizen of the State of Missouri, that the said Sidney was not then in fact a citizen of the State of Missouri, as in said bill is stated, and that this court has no jurisdiction of this suit, as they are advised; but, on the contrary thereof, these defendants have been informed and believe, that said Sidney Eugene, before the time of the filing of his said bill, had departed this life, and the defendants pray said suit may be abated on these grounds, and that this court will refuse to take further cognizance of the same.

And these defendants further answering say, that as to all and singular the other matters and things in the complainant's bill charged, and not hereinbefore answered, or attempted to be answered, the defendant have no knowledge, and can neither admit nor deny the same; but inasmuch as the defendants are sought to be charged by the allegations of said bill, and one of the defendants is still an infant, they pray that the plaintiff be required to make strict legal proof of every allegation and statement in his bill contained, which by the court shall be deemed material, whether the same hath been in this answer denied or not; and also that he make full proof of every allegation in the bill which is necessary or proper to give this court jurisdiction thereof. The defendants submit, that the complainant is not entitled to any relief by reason of any thing in his said bill contained, and pray the benefit of this objection by way of plea and demurrer to said bill, as well as answer; and, for cause of demurrer to said bill, they allege and specify:

1. That the same is not filed in a reasonable time, such as will induce a court of chancery to open and vacate a deed made and acquiesced in, after such lapse of time.

2. That the causes set forth in excuse for such delay are not sufficient nor available to excuse such delay.

3. That so much of said bill as seeks to recover the land cannot be maintained, because more than twenty years have elapsed since the right, if any, hath accrued.

4. That the infancy of said complainant and his brother George are not sufficiently charged to vacate their deeds on the grounds of infancy.

5. That the fraud alleged is not sufficiently charged in not specifying in what the false representations were.

6. That the fraud cannot now, after the death of Joshua Kennedy, be investigated after such lapse of time, nor after the death of George Collins, when never pretended during his lifetime, nor can the infancy of the said George, for the same causes; all which, and other causes of demurrer on the face of the bill, they pray the benefit of by way of defence to said bill, and also by way of plea, so far as the same are available.

And these defendants, having fully answered, pray to be discharged hence with their reasonable costs in this behalf expended, &c.

JOHN G. AIKIN,
CLARA A. AIKIN.

THE STATE OF ALABAMA, *Mobile county:*

John G. Aikin and Clarisa Aikin, his wife, being sworn according to law, on oath depose and say, that the facts and circumstances set forth in the foregoing answer, and stated as of their own knowledge, are true; and those stated as on information derived from others, they believe to be true.

JOHN G. AIKIN,
CLARA A. AIKIN.

Subscribed and sworn to before me, the 11th January, A. D. 1845.
SIDNEY DOUGLASS, *J. P.*

Filed January 11th, 1845.

JOHN FITTS, *Clerk.*

Answer of William Kitchen.

In the circuit court of the United States, southern district of Alabama, at Mobile.

The separate answer of William Kitchin to the bill of complaint against him and others, filed by Sidney E. Collins in this honorable court.

This defendant, saving and reserving all matter of exception to the manifold errors and uncertainties in the said bill of complaint contained, for answer thereto, or to so much thereof as it is material to him to answer unto, answering, says, that he, this defendant, disclaims all title and interest in the premises sued for in this action, and saith that he has no interest or title in the same. He saith that, true it is at one time he did hold the legal title to the land in controversy, so far as the same was conveyed to him by the deeds made to him by Sidney E. Collins, the complainant, by George Collins, by James Innerarity, and by Samuel Kitchin; but he sayeth that he did convey the same to Joshua Kennedy, as by the several deeds exhibited in the cause will more fully appear. He further answers and says, that the title received by him, this defendant, by the said deeds, was for the use and benefit of Joshua Kennedy, and that Joshua Kennedy paid all the considerations for said several deeds.

The defendant further saith, that the deed from Samuel Kitchen to defendant was meant [to] inure to Joshua Kennedy; that this defendant was, many years before, witness to a contract for the sale of said lands by said Samuel to said Joshua, excepting a lot of sixty feet, which lot was also included in said deed; but whether the including it in the shape of a gift to the defendant was intended to couple him beneficially with any equivalent expected by said Samuel therefor, or what was the understanding or expectation of the parties, this defendant does not know. The defendant, however, acknowledges that Joshua Kennedy did, before his death, convey to him a piece of land of sixty by one hundred and ten feet, at the corner of Water and State streets, a part of which is included in the Baudin title, for the express consideration of ten thousand dollars, though there was no money consideration for the making of said conveyance to him, and which was of greatly more value than the lot reserved in the original contract of sale. After the making of Samuel Kitchen's deed to the defendant, defendant made no farther conveyance to Kennedy, it being supposed he held all of defendant's interest under the previous quit-claim of 1832.

The defendant further answering sayeth, that the bill in chancery filed against the said Innerarity, described in the bill of complaint, was filed in the name of this defendant, he having the title of said Collins; but that said suit was for the benefit of Joshua Kennedy, and not for the individual benefit of said defendant, William Kitchin.

This defendant denies that there was any fraud or false representations in the said transaction in the complainant's bill set forth, so far as he, this defendant, is concerned; and he knows of no fraud or fraudulent representation whatever in relation thereto, and believes all said transactions to have been fair and bona fide; and that they were, so far as came within the knowledge or observation of this defendant.

This defendant further answering saith, that he did not, nor does he now, believe he was aiding or abetting in any fraud, in permitting Joshua Kennedy to take conveyances for lands he had purchased in his, the defendant's, name, or that thereby said Joshua meditated any fraudulent concealment; that said Joshua in his lifetime, besides a great number of tax titles, took sundry deeds in the name of this defendant, as well as the deeds of the complainant and George Collins, and of James Innerarity, mentioned in the complainant's bill; that the object for doing so, as expressed by said Joshua, was, that he believed he had himself a better title than the one he was purchasing, which title covered other lands held by him, and that he was apprehensive the taking a conveyance directly to himself might be considered or looked upon as an acknowledgment of the title he was purchasing. This defendant recollects and can specify the following deeds so made to him on purchases of the said Joshua, and in which lands the defendant had no interest, to wit: A deed by James B. Slade, dated March 29th, 1836, for a lot in the lower part of the city of Mobile, at the corner of Madison and St. Emanuel streets, extending sixty feet on Madison and one hundred and twenty [feet] on St. Emanuel, where there was sup-

posed to be some conflict with the lines of Collett, or Eslava, or some other claimant. For this purchase the defendant never saw the deed until after Joshua Kennedy's death, when it was handed to the defendant by the clerk of the county court as his, defendant's, deed; said Kennedy having neglected to call on the defendant to reconvey to him, although the defendant in fact had no interest in the land, nor has he made any reconveyance thereof up to this time; also a purchase made by Joshua Kennedy from John G. Walton, on March 5th, 1836, for the sum of twenty thousand dollars, of a piece of land fronting thirty-nine and a half feet on Water street, and extending thence eastwardly, along State street, to the water, the deed for which was taken in the name of this defendant, because, as Joshua Kennedy stated, said Walton held the land under conveyance from the Orange Grove company; and said Kennedy was unwilling, by taking the deed directly to himself, to seem to admit that the Orange Grove claim did rightfully extend over and embrace said lands, as the boundary between the Orange Grove and Price grants was then a subject of dispute and unsettled. For this land the defendant, at Joshua Kennedy's request, in Nov., 1838, executed a deed of quit-claim to said Kennedy, reciting a consideration of twenty thousand dollars; which was done, however, merely to conform to the amount or sum that was paid by Kennedy to Walton for it; for there was, in fact, no money consideration on the part of the defendant, and he never had any interest in the purchase from Walton.

The defendant alludes to these transactions, and this habit of Joshua Kennedy extending to other matters, to repel any imputation of fraud against himself, in receiving and holding, in his own name, land titles for the benefit of said Kennedy; as this defendant, having fully answered all he is advised it is material for him to answer, touching the discoveries prayed by the complainant, and disclaiming all interest in the subject matter of the suit, prays to be dismissed hence with his reasonable costs, &c.

STEWART & EASTON,
Solicitor for defendant Kitchen.

William Kitchen, one of the defendants in the cause hereinbefore described, being duly sworn, doth depose and say, that the facts and circumstances in the foregoing answer set forth and stated as of his own knowledge are true; and so far as stated from information or belief, he believes them to be true.

WM. KITCHEN.

Subscribed and sworn to the 8th day of January, A. D. 1845.

SIDNEY F. DOUGLASS, *J. P.*

Filed 11th January, 1845.

JOHN FITTS, *Clerk.*

Answer of A. R. Meslier and wife.

In the circuit court of the United States, for the southern district of Alabama, at Mobile.

The separate answer of Augustus R. Meslier and of Mary Meslier, his wife, to the bill of complaint filed against them, and others, by Sid-

ney Eugene Collins. These defendants, saving and reserving all matter of objection to the said bill of complaint, for answer thereto, and so much thereof as it is material for them to answer unto, they answering, say:

They admit that the said defendant, Mary, is the daughter of Joshua Kennedy, and that she has intermarried with the said Augustus R. Meslier; they admit that said Joshua died in the year 1838, and that said Mary, Secluda, Joshua, Clarissa, and Augusta, are the children and heirs-at-law of said Joshua; that said Secluda has intermarried with John H. Hastie, and that Clarissa has married John G. Aikin. They admit that William R. Hallett and Robert L. Walker are the executors of the last will of said Joshua Kennedy; and that by said will, which is proved and recorded in the county court of Mobile county, a portion of the land described by said complainant's bill is devised to said Hallett and Walker, as executors, for the purposes in said will specified, to which will they beg leave to refer.

These defendants further admit, that a portion of said land was conveyed by deed by said Joshua to the defendant Mary, shortly before his decease, by virtue of which deed said defendant, Mary, is entitled to the land therein described.

These defendants further answer and say, that, upon the intermarriage of these defendants, all the rights of property in the land, by the said complainant's bill described, were, by a marriage settlement, vested in the said defendant, Mary.

These defendants further answering say, that they know nothing of the right or title set up by the complainant; they know nothing of the facts of their own knowledge, and all their knowledge on the subject is from information; and so far as they are informed on the subject they say they are advised, and believe, that said complainant has no right or title of any kind whatever to the land claimed, and that the said claim is false and fraudulent. They are informed and believe that said complainant did, many years ago, set up a claim to the said land, as well as the said George Collins, and that they sold their said claim to the said Joshua Kennedy, and each of them received from him the sum of one thousand dollars, which they have ever since retained to their own use. They are further informed and believe that, in truth and in fact, the said Joseph E. Collins never did have any title whatever to said land which was valid; that if he had, that the said George and Sidney were not the legitimate children of said Joseph E. Collins; nor do they admit that there ever was a valid devise to them from said Joseph E. Collins. They are further informed that said Joshua did also pay a large debt due by said Joseph E. Collins to John Forbes & Co., and obtained from James Innerarity, who was administrator of said Joseph E. Collins, a reconveyance of all the title which might have passed by any deed from William E. Kennedy to him, the said Innerarity. They further say they are informed and believe that, uncertain as all titles then were to the said land, the said Joshua did pay to said Innerarity, and said George and Sidney Collins, the full value of all

the rights they then claimed, although they really had no title whatever, and that the said transactions have been acquiesced in so long that they cannot now be disturbed. They are further informed and believe, that said transactions were fair and honest, and that it is false that said Sidney or George were defrauded or deceived; that it is false that said George or Sidney were under the age of twenty-one years when they respectively executed their deeds to the said William Kitchen, and that the attempt now made by said Sidney, if indeed it is made by himself and not by others in his name, is false and fraudulent. They believe all these pretences to be false.

These defendants further say, that they believe the title of the said Joshua was full and complete to said land; and for the particulars of his right and title these defendants refer to the answer of the said Hallett and Walker filed in the cause, and as containing the information they have on this subject, and they adopt the said answer as theirs, and pray the benefit of all the matter of defence which the said answer may disclose for their benefit, as well matters of law as of fact.

These defendants have no deeds or titles in their possession, but refer to the titles and documents which are of record, and which they pray leave to refer to; by which it will appear, as they are advised, that the right and title they claim is full and perfect, and that the said complainants have no right or title to said land, nor to any part, and no equitable interest whatever in the same.

And these defendants, having fully answered, as they are advised, pray to be hence dismissed, with their reasonable costs in and about their defence in this behalf expended.

STEWART & EASTON,
Sol'rs for Aug. R. Meslier and Mary, his wife.

Augustus R. Meslier and Mary Meslier, his wife, defendants in the cause hereinbefore described, being duly sworn, depose and say, that the facts and circumstances in the foregoing answer set forth, so far as they are stated of their own knowledge, are true; and so far as stated from information and belief, they believe to be true.

A. R. MESLIER,
MARY C. MESLIER.

Subscribed and sworn to before me, this 3d day of January, 1845.
EDWIN RUST, *J. P. M. C.*

Filed 11th January, 1845.
JOHN FITTS, *Clerk.*

In the circuit court of the United States, southern district of Alabama, at Mobile. In chancery.

The separate answers of Augusta Kennedy and of Joshua Kennedy, who are infants, and who answer by Wm. R. Hallett, guardian ad litem, as aforesaid, to the answer of the said bill of the said complainant, is advised to make answer for the said infants, and doth answer, that the said Augusta and Joshua are infants, and know nothing of the several

matters and things in the said complainant's bill alleged against them; that they are children and heirs at law of Joshua Kennedy, and that they claim all the rights which belong to them as such; and that if the said complainant hath any such rights and equities as he has alleged and set forth in his said bill, they pray that the same may be shewn, and made *made* manifest to this honorable court, by full and lawful evidence, as is required by the rules of the court, and that their rights may be fully protected in this behalf. That they do in no wise admit the allegations of said bill, nor any of them, but deny the said claim and every material fact therein alleged and set forth by said complainant, and require the same to be proved; and, having fully answered, they pray to be hence dismissed, with their reasonable costs in this behalf most wrongfully sustained.

STEWART & EASTON,
Sol'rs for Augusta Kennedy and Joshua Kennedy, who defend by Wm. R. Hallett, their guardian ad litem, appointed by the court.

Filed February 1st, 1845.

JOHN FITTS, *Clerk.*

UNITED STATES OF AMERICA, *circuit court of the U. S.:*

SIDNEY E. COLLINS,
vs.
WM. R. HALLETT, Rob't L. Walker, executors, J. H. Hastie and wife, A. R. Meslier and wife, John G. Aiken and wife, James Innerarity, James Campbell, Branch Bank at Mobile, Augusta Kennedy, Joshua Kennedy.

The replication of the complainant to the answers of the several defendants.

This repliant, saving and reserving unto himself all and all manner of benefit of exception to the manifold insufficiencies of the said answers of the several defendants aforesaid, for replication thereunto saith, that he will aver and prove his said bill to be as true and sufficient in law to be answered unto, and that the said several answers are uncertain, untrue, and insufficient to be replied to by this repliant.

Without this, that any other *or* thing whatsoever, in said answers in said answer contained, material [or] affectual, in the bill to be replied unto, confessed and considered, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver and prove as this honorable court shall direct, and humbly prays as in and by his said bill he hath already prayed.

CAMPBELL & CHANDLER,
For the pl'ff.

Filed February 1st, 1845.

JOHN FITTS, *Clerk.*

572.

Petition for leave to amend.

UNITED STATES OF AMERICA,
Circuit court of the U. S., southern district of Alabama.

In chancery.

To the honorable the judges of the said court:

The petition of Sidney E. Collins shows to your honors, that on the 27th April, ult., he filed his bill in said court against William R. Hallett and Robert L. Walker, executors of the last will and testament of Joshua Kennedy, deceased, John H. Hastie and wife, A. R. Meslier and wife, Clarissa Kennedy, Augusta Kennedy, Joshua Kennedy, James Innerarity, Samuel Kitchen, William Kitchen, James Campbell, the President and Directors of Branch of the Bank of the State of Alabama, at Mobile. That subpœnas have been served upon the parties, and all of them have answered except Joshua Kennedy and Augusta Kennedy, James Campbell, and the Branch Bank. That a decree pro confesso has been taken against the two last named.

Your petitioner states, that he desires to amend his bill by setting out in his bill, as an exhibit, a will of Joseph E. Collins, in which he is named as a devisee, and under which he claims the land in dispute. 2. That he desires to specify the time of the death of his two brothers more particularly. 3. The defendants in their answers claim under the title of the Spanish government to one Thomas Price, and insist that that claim is paramount to the claim of your orator, under other Spanish concessions set forth in the bill. Your orator desires to amend his bill, so as to insert allegations, putting in issue the validity of the Spanish concession to Thomas Price. Your petitioner submits the papers in the cause, and respectfully asks for leave to make the amendments requisite.

CAMPBELL & CHANDLER, *for Pl'ff.*

Let the bill of the complainants be amended in the particulars above set forth, agreeably to their prayer. January 29th, 1845.

WM. CRAWFORD, *Judge.*

And afterwards, to wit, at rules held in the office of the clerk of said court, on the first Monday of March, in the year of our Lord one thousand eight hundred and forty-five, the following proceedings were had, to wit:

Order at Rules.

SIDNEY E. COLLINS,
vs.
WM. R. HALLETT, Robert L. Walker, ex'rs of the last will of Joshua Kennedy, dec'd, J. H. Hastie, and wife, J. G. Aiken and wife, A. R. Meslier and wife, and others, def'ts.

In this came the plaintiff, and moves for an order to examine Samuel Kitchen, one of the defendants, upon the suggestion that he is not

interested in the matters to which his examination is to be directed; which motion is allowed on the usual terms, reserving to the defendants their objections.

Attest: JOHN FITTS, *Clerk.*

And afterwards, to wit, at rules held in the office of the clerk of said court aforesaid, on the first Monday of May, in the year of our Lord one thousand eight hundred and forty-five, the following proceedings were had, to wit:

Order at Rules.

SIDNEY E. COLLINS,
vs.
WM. R. HALLETT and R. L. Walker, ex'rs, et al.

Ordered, that the clerk of the said court may issue, upon the application of the plaintiff or defendants, commissions to take testimony to such persons as have been heretofore appointed to take testimony in this cause, the other requisites of the rule of the Supreme Court of the U. S. being complied with.

WM. CRAWFORD, *Judge.*

And afterwards, to wit, at rules held in the office of the clerk of the court aforesaid, on the first Monday of December, A. D. 1847, the following proceedings were had, to wit:

SIDNEY E. COLLINS,
vs.
WM. R. HALLETT, R. L. Walker, ex'rs, et al.

This day came the plaintiff, by his solicitor, and moves for an order of publication, and that the cause be set down for a hearing; which motion is allowed.

Attest: JOHN FITTS,
Clerk C. C. southern district, Ala.

And afterwards, to wit, on the twenty-fourth day of April, in the year of our Lord one thousand eight hundred and forty-six, being a day of a term of said court, begun and held in and for said district, at Mobile, on the second Monday of April, in the year of our Lord one thousand eight hundred and forty-six, the following proceedings were had, to wit:

Continuance.

SIDNEY E. COLLINS,
vs.
HALLETT and WALKER, ex'rs, et al.

It is ordered by the court, that this cause be continued.

And afterwards, to wit, on the fifth day of January, A. D. 1847, being a day of a term of said court, begun and held in and for said district,

at Mobile, on the fourth Monday of December, A. D. 1846, the following proceedings were had, to wit:

Order.

SIDNEY E. COLLINS,
vs.
HALLETT and WALKER, ex'rs, et al.

In this cause came the complainant, by his solicitors, and dismisses his bill as to William Kitchen and James Innerarity; and it is shown to the court that Samuel Kitchen died in the summer of 1845; the said suit as to him is abated.

And afterwards, to wit, on the fourteenth day of January, A. D. 1847, being a day of a term of said court, begun and held in and for said district, at Mobile, on the fourth Monday of December, A. D. 1846, the following proceedings were had, to wit:

Continuance.

SIDNEY E. COLLINS,
vs.
HALLETT and WALKER, ex'rs, et al.

It is ordered by the court, that this cause be continued.

Agreement.

SIDNEY E. COLLINS,
vs.
WM. R. HALLETT, R. L. Walker, ex'rs, et al.

The parties to this suit mutually consent to submit the cause upon such of the depositions and documents produced and received in evidence, without making special exceptions upon the relevancy of the testimony, or to the admissibility of any part of the same. It is agreed, however, that neither party shall be prejudiced by this submission, but that all hearsay, irrelevant testimony, and all testimony of declarations of parties not called for by their opponents, or properly admissible, and all testimony of the belief of witnesses shall be considered as objected to, and the court shall decide the cause upon the testimony which would be legally proper for its decision, if the parties had properly objected to all evidence that is legally irrelevant or incompetent.

J. A. CAMPBELL, *for Plaintiff.*
STEWART & EASTON,
Solicitors for def'ts, except Campbell and State Bank.

THE UNITED STATES OF AMERICA,
Southern district of Alabama:

To Chas. S. McRae, Wm. C. Micon, or any judge or justice of the courts of the United States, or of the superior or supreme court of any State; any chancellor, mayor or chief magistrate of a city, or judge of a county court or court of common pleas of any of the United States.

Know ye, that, reposing full confidence in your prudence, fidelity, and skill, we have appointed you, and do give you and each and either of you full power and authority, to take the depositions of Mrs. John Murphy, on interrogations by cross interrogations, in a certain cause pending in the circuit court of the United States for the southern district of Alabama, in which Sidney E. Collins is plaintiff, and Wm. R. Hallett and Robert L. Walker, executors of the last will and testament of Joshua Kennedy, deceased, and John H. Hastie and his wife, Augustus R. Meslier and his wife, John G. Aiken and his wife, Augusta Kennedy and Joshua Kennedy, James Innerarity, Samuel Kitchen, Wm. Kitchen, James Campbell, and the Branch of the Bank of the State of Alabama, at Mobile, are defendants. And we do require you, or some one of you, to cause the witness aforesaid to come before you, or some one of you, and to take the examination of said witness under oath to reduce his answer to writing, and to cause him to subscribe the same. Which being done, you will enclose the same, under your hand and seal, to our said circuit court.

Witness, Hon. Roger B. Taney, chief justice of the Supreme Court *of the Supreme Court* of the United States, and the seal of the court, this 4th Monday of December, 1844. Issued 1st March, 1845.

JOHN FITTS,
C. C. southern district, Alabama.

Commission allowed.

WM. CRAWFORD, *Judge.*

Interrogatories to be exhibited to Mrs. John Murphy, a witness for the plaintiff in a suit pending in the circuit court of the United States for the southern district of Alabama, in which Sidney E. Collins is plaintiff, and Wm. R. Hallett and Robert L. Walker executors of the last will and testament of Joshua Kennedy, deceased, and J. H. Hastie and wife, John G. Aiken and wife, A. R. Meslier and wife, Joshua Kennedy, Augusta Kennedy, and others, are defendants.

1. Were you acquainted with Joseph Collins, a surveyor of the Spanish Government about the year 1806, and who afterwards resided at Pascagoula; when did your acquaintance commence, and when did it terminate?

2. Were you present at the marriage of the said Collins with Elizabeth Wilson; when did that marriage occur; who was present; at what time did it take place?

3. Are you acquainted with the children of the marriage; what are the names of the children; when was George Collins born; when was Joseph; when was Sidney E. Collins; when did their father die, and at what place?

4. Did Joseph E. Collins and his wife Elizabeth Wilson live together, till the death of said Collins, as husband and wife; was Elizabeth Wilson received and esteemed as such by her husband and by her acquaintance?

5. If you know any fact material to the questions in issue between

these parties, or to the evidence you have given in the cause, answer them fully and at large.

CAMPBELL & CHANDLER
for Plaintiff.

Cross interrogatories to be submitted to Mrs. John Murphy, in the before named case.

1. If you speak of being present at any marriage of Joseph Collins and Elizabeth Wilson, state in whose house it took place; describe particularly the marriage ceremony, and say who officiated as priest or other officer to perform the same; was there any priest present; were there any priests then in the country, or at Mobile?

2. What was the ordinary or customary mode of marrying in the country at that time; what was esteemed or considered the lawful mode?

3. Do you know of any other person during the Spanish time being married in the same way that Joseph Collins and Elizabeth Wilson were. If so, name them.

4. State if what took place between Joseph Collins and Elizabeth Wilson as a marriage, was not done as introductory to, or in contemplation of something else thereafter to be done, in order to perfect it and make it legal; if so, what was so contemplated; and was the thing so contemplated ever done?

5. Do you know who was the father of the children of Elizabeth Wilson?

6. State whether, in the times spoken of in the direct interrogatories, persons of different sexes cohabiting, and not married in the form or manner you say was usual then, were deemed to be living as man and wife, or as living in a state of adultery or concubinage.

7. What was your name at the time Joseph Collins and Elizabeth Wilson lived together; were you married, and to whom?

8. What circumstances led to the cohabitation of Joseph Collins and Elizabeth Wilson; what had her conduct been previously; was she not required to leave a certain family unless Collins married her; if so, what family, and by whom was she so required to leave; did she or not leave said family about that time; was not that the commencement of her living with Joseph Collins in his house?

9. Was it not known, or supposed by many or some, that Joseph Collins and Elizabeth Wilson, during the time of their cohabitation, were not married; did you or not know they were not married?

10. By what fact can you fix the exact ages of George and Sidney Collins; how old was Sidney at the time of the death of Joseph Collins, his reputed father?

11. At what time did the said Elizabeth Wilson [marry] Benjamin Lanier; who officiated or performed the marriage ceremony?

12. If you speak of Joseph Collins and Elizabeth Wilson being married, say if George her eldest son was born before or after said marriage, and how long before or after said marriage.

13. Did Joseph Collins ever call or style the woman spoken of

"Elizabeth Wilson" or "Miss Wilson," during the time they lived together; did he so name her in any instrument of writing?

14. Was Joseph Collins a man of any property; was he able to have borne the expenses of being married in the usual or ordinary mode?

15. Was Pascagoula, about the time Joseph Collins and Elizabeth Wilson went to live together, thickly or thinly settled; was a marriage there at that time an event that was likely to be known or spoken of; was the society about that time ordinarily moral or religious; were people then solicitous about having their marriages registered or recorded?

16. If you know of any fact material to the questions in issue between the parties, or to the evidence you have given, set forth the same fully and at large in your answer.

STEWART & EASTON,
For Defendants.

Filed February 18th, 1845.

JOHN FITTS, *Clerk.*

Cross interrogatories filed February 28th, 1845.

JOHN FITTS, *Clerk.*

STATE OF LOUISIANA, *Parish of St. Martin's.*

By virtue of a commission hereunto annexed, directed to me from the honorable circuit court of the United States of America, for the southern district of the State of Alabama, I have caused Lavinia Murphy, the widow of John Murphy, deceased, and witness named in the aforesaid commission, to come before me this 17th day of March, A. D. one thousand eight hundred and forty-five, at her house in the town of St. Martinsville, in the State and parish aforesaid; and after having duly sworn the said witness to testify and depose the whole truth, on the interrogatories and cross interrogatories annexed, in a certain cause pending in the aforesaid court, in which Sidney E. Collins is plaintiff, and Wm. R. Hallett and Robert L. Walker, executors of the last will and testament of Joshua Kennedy, deceased, and John H. Hastie and his wife, Augustus R. Meslier and his wife, John E. Aiken and his wife, Augusta Kennedy and Joshua Kennedy, James Innerarity, Samuel Kitchen, Wm. Kitchen, James Campbell, and the Branch of the Bank of the State of Alabama, at Mobile, are defendants, the said witness did depose and answer as follows:

To the 1st interrogatory she answers: That she was well acquainted with Joseph E. Collins; that he was a captain in the Spanish service, and surveyor under the Spanish government, and resided during witnesses acquaintance with him at Pascagoula; that her acquaintance commenced with the said Collins some time in the year 1804, and terminated at the time she left Pascagoula in the close of the year 1807.

To the 2d interrogatory the witness answers: That she was present at the marriage of the said Collins to Elizabeth Wilson; that it occurred in the house of Dr. James White, the husband of witness, at Pascagoula; that to the best of her recollection the marriage took place in the year 1805, and she does not recollect of any one being present but herself and husband.

To the 3d interrogatory the witness answers: That she knows the children of the marriage; that their names were George Emily, Sidney Eugene, and Joseph; that George Emily was born, to best of her recollection, in the latter part of the year 1806, at Pascagoula, in the house of deponent; that she knows nothing as to the time of the birth of the other children, further than it was after the latter part of the year 1807, and before the year 1812; that she understood that their father died at Pascagoula; she heard of his death; can't say at what time it occurred, but knows it was previous to the year 1812.

To the 4th interrogatory the witness answers: That Joseph E. Collins and Elizabeth Wilson did live together as husband and wife, to the best of her belief, until the death of said Collins; that Elizabeth Wilson was always received and esteemed as his wife by her acquaintance and the community generally; and that the said Collins always acted towards her and considered her as such; and that the deponent never before heard the fact of their being such questioned.

To the 5th interrogatory the witness answers: That, as to what facts may be material to the questions in issue, she does not know; but that she will state what she knows concerning the parties, and says that, in or about the year 1801, she, the deponent, went with her husband, Dr. James White, to reside at Pascagoula; that, in one or two years after, a Mr. Wilson, a man of intelligence and respectability, came for his health to Pascagoula, and brought with him three children, two daughters and a son; Elizabeth was the oldest daughter, and was left with deponent on her father's return home, after his health was restored; that Capt. Collins became acquainted with Elizabeth Wilson at the house of the deponent, in the year 1804, and, being pleased with her, solicited her hand in marriage of Dr. White and the deponent; that they had no objection to the marriage, thinking it good match for Elizabeth Wilson, in whose welfare they felt a deep interest. The only difficulty in the way of the marriage was, that Collins was a Spanish officer, and it was thought that his marriage might not be valid without the consent of the King; he agreed to write for this consent, and the deponent believes he did so, and the marriage, on this account, was postponed for a long time, perhaps a year or more; at length, Collins being very anxious that the marriage should take place, Dr. White and deponent consented to it, and they were married; Dr. White performed the ceremony, by virtue of his office as syndic, and Collins, after the marriage, resided with his wife in the house of deponent until after the birth of their first child, which was named George Emily, and for which deponent was chosen godmother; from the time of the marriage ceremony the said Collins and Elizabeth Wilson were always looked upon and considered as husband and wife, lawfully married, by the deponent, her husband, and their acquaintances generally. The deponent states that she left Pascagoula in the latter part of the year 1807, and moved with her husband to the Territory of Louisiana, and that she returned to Pascagoula on a visit with her second husband, Mr. John Murphy, in the year 1812; that during her absence she had heard of Collins'

death, and on her return found Mrs. Collins still living at Pascagoula, and had three children, George Emily, Sidney E., and Joseph; that she, the witness, spent some days in the house of Mrs. Collins, who spoke much of her husband, and seemed greatly afflicted by his death; that the witness' then husband, Mr. John Murphy, brought away, when they returned, the oldest boy, George Emily, and put him to school on Bayou Vermillion, in Louisiana; and the witness recollects distinctly the other two boys.

L. MURPHY.

Sworn to and subscribed before me,

CHAS. S. McRAE, *Commissioner.*

Answers to the cross interrogatories.

To the 1st cross interrogatory the witness answers: That the marriage ceremony was performed, as stated in the 2d direct interrogatory, in the house of Dr. James White, her husband; that he performed the ceremony by virtue of his office of syndic under the Spanish government, as he was accustomed to do; that there was no priest present; that there were none in the neighborhood of Pascagoula at that time, but deponent supposes that there were many in *in* Mobile.

To the 2d cross interrogatory the witness answers: That the usual mode of marrying in the country, at that time, was before the syndic or priest—the latter if the parties were Catholics; either of these modes of marriage were considered lawful.

To the 3d cross interrogatory the witness answers: That her husband, Dr. James White, married others in the same way that he did Joseph Collins and Elizabeth Wilson; but at this time she cannot recollect the names of any of them.

To the 4th cross interrogatory witness answers: That the ceremony of marriage between Joseph E. Collins and Elizabeth Wilson, which took place before Dr. White as syndic, was supposed to be a final and complete marriage, and that there was nothing else contemplated to be done in order to render it more valid or legal.

To the 5th [cross] interrogatory witness answers: That she never has had a doubt but that Joseph E. Collins, the husband of Elizabeth Wilson, was the father of the children named in the 3d direct interrogatory.

To the 6th cross interrogatory the witness answers: That it was customary in those times for persons to cohabit together without any forms of marriage ceremony, and they were considered, if they declared their intention so to be, as man and wife; those of the Catholic religion had the marriage ceremony performed by a priest, and as there was seldom any nearer than New Orleans or Mobile, and as their charges for celebrating marriages were very exorbitant, young people were frequently unable to pay the expenses at the time when they wished to contract marriage; in such cases they would obtain permission from the priest to live together as man and wife until they should acquire the means of paying for the ceremony; persons frequently went together in this way, and

sometimes the ceremony was afterwards performed, and sometimes it was not; but persons so living together were always esteemed and considered as man and wife.

To the 7th cross interrogatory the witness answers: That her name was Lavinia White; that she was the wife of Dr. James White, who married her in Natchez, in the year 1799.

To the 8th cross interrogatory the witness answers: That she has stated the circumstances, in the 5th direct interrogatory, that led to the cohabitation of said Collins and Elizabeth Wilson; that the conduct of Elizabeth Wilson, previous to her marriage, was correct and exemplary; that she was esteemed by all who knew her as an amiable and virtuous girl; that she never was required to leave any family; that, from the time of her acquaintance with the said Collins until her marriage, she always lived in the house of the deponent, and was regarded with as much interest and affection by deponent and her husband as if she had been one of their own children.

To the 9th cross interrogatory the witness answers: That, in her belief, no one ever doubted but that Joseph E. Collins and Elizabeth Wilson were married; and that she knew the fact from having been present at the ceremony.

To the 10th cross interrogatory the witness answers: That the facts which enable her to judge of the ages of the children are, that she left Pascagoula in the latter part of the year 1807, and George Emily was then a baby; and that when she returned, in 1812, Sidney was a little boy, running about; the witness cannot say what was the age of Sidney at the time of his father's death.

To the 11th cross interrogatory the witness answers: *The* she knows nothing.

To the 12th cross interrogatory the witness answers: That, to the best of her recollection, George was born about twelve months after the marriage.

To the 13th cross interrogatory the witness answers: That she has no recollection of said Collins calling or styling his wife, after marriage, as "Elizabeth Wilson," or "Miss Wilson," or as having ever so named her in any instrument of writing.

To the 14th cross interrogatory the witness answers: That the said Collins was considered a man of good fortune, and the expense of any other mode of marriage could *not* have been no objection with him.

To the 15th cross interrogatory the witness answers: That, at the time of Joseph Collins' marriage with Elizabeth Wilson, there were few residents about Pascagoula; that a marriage was an event likely to be known; that the society about the bay at that time was good, the people moral, and generally of the Catholic faith in religion; that she knew of no records or registers of marriage kept in the country, and does not think that the people ever thought of such a thing about Pascagoula.

To the 16th cross interrogatory the witness answers: That she knows of nothing further that may be of benefit or interest to the parties than

what she has stated in the preceding interrogatories and cross interrogatories. L. MURPHY.

Sworn to and subscribed before me.

CHAS. S. McRAE, *Commissioner.*

STATE OF LOUISIANA, *Parish of St. Martins:*

I, Chas. S. McRae, one of the commissioners named in the foregoing annexed commission, issued from the circuit court of the United States for the southern district of Alabama, in the cause of Sidney E. Collins, *vs.* Wm. R. Hallett, Robert L. Walker et al., do hereby certify that, on the 17th day of March, A. D. 1845, Mrs. Lavinia Murphy, *alias* Mrs. John Murphy, the witness named in said commission, did come before me, at her house, in the town of St. Martinsville, in the State and parish aforesaid, and upon oath, to answer the truth, the whole truth, and nothing but the truth, was examined upon the interrogatories annexed to the commission. I further certify, that the answers were made by the said Mrs. Murphy, and reduced to writing by me, and read over to her, and that she subscribed her name in my presence. All of which I certify, under my hand and seal, this 17th day of March, A. D. 1845. CHARLES S. McRAE, [SEAL.]

Commissioner.

To the honorable Circuit Court of the United States, for the southern district of Alabama.

UNITED STATES OF AMERICA,

Circuit court of the United States, southern district of the State of Alabama, Mobile.

To Wm. Taylor, Rufus Rhodes, Thomas Rhodes, sr., or either one of you:

Know ye, that in confidence of your skill and fidelity, we have appointed you, and by these presents do give you full power and authority, to examine on oath, as witnesses, John B. Beaudreaux, Wm. Seamon, Simon St. Cyr, James Ware, Samuel Ware, Baptiste, Ela, and Jaco Ladner, in a certain cause, pending in the circuit court of the United States for the southern district of Alabama, in which Sidney E. Collins is plaintiff, and Wm. R. Hallett and Robert L. Walker, executors of the last will and testament of Joshua Kennedy, deceased, J. H. Hastie and wife, J. G. Aiken and wife, A. R. Meslier and wife, Joshua Kennedy, Augusta Kennedy, and others, are defendants, on the interrogatories and cross interrogatories herewith.

And we do give you, and each of you, full power and authority to cause said witnesses to come before you, at such time and place as you may appoint, and to examine them on their oaths, and do require you, or some one of you, to reduce their answers to writing, to cause the said witnesses to subscribe the same, and to cause the same to be sealed up under your hands and seals, and returned in our circuit court aforesaid.

Witness the honorable Roger B. Taney, chief justice of the Su-

preme Court of the United States, this 4th Monday of December, 1844.

Issued 1st March, 1845. JOHN FITTS,
C. C. Sn. Dist. Ala.

Commission allowed. WM. CRAWFORD, *Judge.*

Interrogatories to be submitted to John B. Beaudreaux, William Seamon, Simon St. Cyr, James Ware, Samuel Ware, Baptiste Ela, and Jaco Ladner, witnesses for the plaintiff in a suit pending in the circuit court of the United States, for the southern district of Alabama, in which Sidney E. Collins is plaintiff, and William R. Hallett and Robert L. Walker, executors of the last will and testament of Joshua Kennedy, deceased, J. H. Hastie and wife, A. R. Meslier and wife, and others, are defendants.

1. Were you acquainted with Joseph Collins, formerly a surveyor of the Spanish government, and Elizabeth Wilson, his wife, while they resided at Pascagoula? How long did they live there?

2. Were you present at the marriage of the said Collins with the said Elizabeth? Where did the marriage take place?

3. How long did the parties live together as husband and wife? Where did Joseph Collins die?

4. How many children were there of the said Collins and wife? What was their names, and when were they born? When did any of them die?

5. If you know any fact material to the matters in issue between these parties as to your testimony in this cause, state the same. Answer fully and at large.

CAMPBELL & CHANDLER,
For Plaintiff.

Cross interrogatories to be exhibited to John B. Beaudreaux, William Seamon, Simon St. Cyr, James Ware, Samuel Ware, Baptiste Ela, and Jaco Ladner, witnesses for the plaintiff in a cause pending in the United States circuit [court] at Mobile, in which Sidney E. Collins is plaintiff, and Hallett and Walker, executors of the last will [and testament] of Joshua Kennedy, Joshua Kennedy's heirs and others, are defendants.

1. If you were present at any marriage between Joseph Collins and Elizabeth Wilson, what other persons were present, and in whose house did it take place? State precisely and minutely what took place on that occasion, which you call a marriage—what ceremony was there? And who officiated to perform the ceremony?

2. What was the usual or customary mode of marrying at Pascagoula, and the country generally, so far as you know during the Spanish times? What was then understood to be the legal mode? Was the presence of a priest deemed necessary? Was there then believed to be any other legal mode than such as you have named; if so, what was it?

3. Was the country then about Pascagoula thinly or thickly settled?

Would a marriage contracted in the usual and legal form have been an event to be known to a good many persons? Were the people in those days, when lawfully married, solicitous about having their marriage registered in the proper way?

5. State, if in that country, during the time spoken of, a man and woman cohabiting together and not married in the mode you have spoken of as legal and customary, would have been considered as living together as man and wife, or as living in a state of adultery and concubinage.

5. Was it not understood among the acquaintances of Joseph Collins and Elizabeth Wilson that they were not married, but were merely living together?

6. What was the ability or estate of Joseph Collins? Was he as well off as the inhabitants of the district upon an average?

7. Were there any priests in the country throughout the period from 1806 to 1812; did they visit Pascagoula, Biloxi, or Pass Christian, to christen children or celebrate marriages during that interval of time; did they come frequently?

8. Would it have been easy to obtain the services of a priest to solemnize a marriage, generally, during the time from 1806 to 1812, in the country before spoken of?

9. If you speak of the death of any of the children of Elizabeth Wilson, say whether you speak of your own knowledge, or from hearsay. At what place, and when, did any of them die? And where were you residing at the time?

10. Are you married; if so, when were you married; where do you live; and where did you live when you were married? Did your wife take your name when you married her, and has she retained it ever since?

11. Can you fix the exact ages of George and Sidney Collins; what circumstance enables you to do so?

12. Can you undertake to say that any of the children born of Elizabeth Wilson were the children of Joseph Collins; did she ever tell you so? If so, which did she say was Joseph Collins's child?

13. Do you recollect seeing Sidney E. Collins, a child, as early as any time in the year 1808? Please to tax your memory. Who christened Sidney E. Collins; that is, what priest?

14. If you know any fact material to the matters in issue between the parties, or to the matters of evidence as to which you have been interrogated, set forth the same fully and at large in your answer.

STEWART AND EASTON,
For Defendants.

THE STATE OF MISSISSIPPI, *Jackson county:*

By virtue of a commission issued from the circuit court of the United States for the southern district of Alabama, and which is herewith returned, I, Rufus R. Rhodes, one of the commissioners therein named, no wise related to either the plaintiff or defendants, or interested in the

event of the suit therein specified, do hereby certify, that I caused John B. Beaudreaux, a witness named in the said commission, to come before me, who, being duly sworn to answer the truth to the interrogatories and cross interrogatories herewith returned, did answer and depose as follows:

To the first interrogatory he answers: I was acquainted with Joseph Collins and Elizabeth Wilson, his wife, while they lived at Pascagoula. I do not remember precisely the length of time they lived here, but think it was about five or six years.

To the second he answers: I was not present at the marriage of the parties; cannot recollect in what year the marriage took place. Understood at the time, and believe the marriage took place at the house of one White, with whose family the said Elizabeth had been living previously.

To the third he answers: Joseph Collins lived with the said Elizabeth, his wife, as his wife until his death, which occurred five or six years after his marriage with her. Collins died at this place, i. e. Pascagoula, as well as I can recollect, in the year 1810 or 1811.

To the fourth he answers: The parties had three children, George, Joseph, and Sidney E. Collins. I do not recollect the date of the birth of either of them. Joseph died near this place, in what year I do not remember, but at a very early age. I have understood that George also is dead, but I do not know that he is so of my own knowledge.

To the fifth he answers: The parties were looked upon as man and wife by all persons at Pascagoula, and in the neighboring country—the said Elizabeth sitting at Collins's table, receiving his guests, managing his household affairs, and acting in all matters in Collins's lifetime as his wife, and at his death took possession of his property, and used and disposed of it as the owner, no one ever questioning her right so to do. Her children took and bore the name of their father, i. e. Collins.

Cross interrogatories.

To the first cross interrogatory he answers: I was not present; I think that Joseph Graham and Sard. Graham were. They are now living in this county. I do not recollect the names of any other living persons who were probably there. I have already stated at whose house the marriage took place. Not having been present at the ceremony, I cannot describe what took place; I cannot describe the ceremony, nor say who officiated to perform it.

To the second he answers: I never saw the marriage ceremony performed during the Spanish times, and cannot answer, therefore, as to its customary mode of performance. I know that marriages by priests were considered legal, but I cannot say positively as to the necessity of a priest's presence. I do not recollect any other mode of marriage than the one in which a priest officiated.

To the third he answers: Pascagoula, and the country around it, was thinly populated at the time spoken of; a marriage would have been generally known. Collins's marriage with Elizabeth Wilson was gen-

erally known. I believe the people were in the habit generally of having their marriages registered.

To the fourth he answers: That unless the legal mode had been pursued in having the marriage ceremony performed between persons living and cohabiting together, they were not regarded at the time in question as man and wife, but were looked upon as living in a state of adultery and concubinage. I think matters of this sort were regarded there very much in the same light that they are at present.

To the fifth he answers: The parties were looked upon as man and wife; they were not considered as merely living together.

To the sixth he answers: That Collins was the owner of some property, but he was by no means well off.

To the seventh he answers: There was no priest living at Pascagoula within that period, but they were in the habit of passing through the places mentioned to perform the ceremonies mentioned now and then; they did not come often, once or twice perhaps in a year.

To the eighth he answers: That a priest could be obtained at any time, while the country was under the jurisdiction of Spain, from New Orleans or Mobile.

To the ninth he answers: I was not present at the death of either of the children, but I have always understood that Joseph died while a child near this place. I do not know when nor where George died; have merely heard that he was dead. I lived at the mouth of Pascagoula river (where I have always lived until about two years ago) at the time spoken of.

To the tenth he answers: I am married; was married four years ago; lived at the place mentioned in the next preceding answer at the time of my marriage. My wife took my name, and has borne it since.

To the eleventh he answers: I cannot state the exact age of either of the children of the parties.

To the twelfth he answers: The mother only can answer that question positively, but I believe that all the children mentioned as being born of Elizabeth were Collins's children. I never heard any thing reflecting, in the slightest degree, upon her good faith as a wife. I never had any conversation with Elizabeth herself upon the subject.

To the thirteenth he answers: I do not recollect the period at which I first saw Sidney E. Collins, nor can I recollect the name of the priest who christened him. I cannot say positively that he was christened.

To the fourteenth he answers: I know nothing further bearing upon the matters in issue.

his
JOHN B. × BEAUDREAUX.
mark.

I, Rufus R. Rhodes, commissioner named in the attached commission, do certify that the said witness, John B. Beaudreaux, named in the same, came before me, and having been duly sworn to answer and

depose the whole truth, did depose as before stated; that the answers were taken down by me, and the witness subscribed in my presence.

Witness my hand and seal, the 26th day of March, A. D. 1845.

RUFUS R. RHODES, [L. S.]
Commissioner.

THE STATE OF MISSISSIPPI, *Jackson county:*

By virtue of a commission issued from the circuit court of the United States for the southern district of Alabama, and which is herewith returned, I, Rufus R. Rhodes, one of the commissioners therein named, no wise related to either the plaintiff or defendants, or interested in the event of the suit therein specified, do hereby certify, that I caused Jaco Ladner, a witness named in the said commission, to come before me, who, being duly sworn to answer the truth to the interrogatories and cross interrogatories herewith returned, did answer and depose as follows:

To the first interrogatory he answers: I knew the parties at the time they lived at Pascagoula. I do not recollect the precise length of time they lived there; it was at least five or six years, and until Collins died.

To the second he answers: I was not present when they were married; I do not remember the year of their marriage.

To the third he answers: Joseph Collins and Elizabeth Wilson lived together as man and wife five or six years, and until Collins died; his death took place, as near as I can recollect, in the year 1811, and at this place.

To the fourth he answers: They had three children, George, Joseph, and Sidney. I do not remember when any of them were born, or when any of them died.

To the fifth he answers: That the inhabitants of Pascagoula, and the neighboring country, generally speaking, esteemed and looked upon Elizabeth Wilson as the wife of Collins. She acted at all times, and in all matters, as Collins's wife. Her children took their father's (Collins's) name, and after his death no one ever disputed the right which was exercised by Elizabeth, to take and use for her own purposes the property left by Collins.

Cross interrogatories.

To the 1st cross interrogatory he answers: I was not at the marriage; don't know who was present; do not know what took place; don't know what the ceremony was, nor who performed it.

To the 2d he answers: The marriage ceremony was usually performed by a priest. According to my recollection a marriage was not legal unless performed by one. I think the presence of a priest was necessary. I do not remember any other legal mode than the unsual one in which a priest officiated.

To the 3d he answers: The county was very thinly settled, and from that circumstance a marriage was an event of some importance and novelty, and would certainly be known to every body. Persons

were generally anxious to have their marriages recorded, but sometimes neglected to do it or have it done themselves, depending upon the priest to do it for them.

To the 4th he answers: Unmarried persons living and cohabiting together, at the time spoken of, were looked upon precisely as they would be looked upon now—not as man and wife, but as living together in a state of adultery and concubinage. I do not remember any instance of persons living and cohabiting together, and unmarried, who were regarded as man and wife.

To the 5th he answers: I have answered that the parties were generally regarded as man and wife; there were persons known who did not esteem their marriage to be legal; why, I cannot say.

To the 6th he answers: Joseph Collins had but little property.

To the 7th he answers: There were no priests living at Pascagoula at this time, but they were passing occasionally. They did visit those places to perform the ceremonies mentioned. They did not pass very frequently.

To the 8th he answers: A priest could be obtained at any time, within the periods mentioned, at Mobile or New Orleans.

To the 9th he answers: I do not know of the death of any of her children of my own knowledge; I have heard that Joseph died on the Pascagoula river, not far from this place. I cannot say when his death took place.

To the 10th he answers: I am married; was married in 1817, at Pascagoula, where I have resided all my life. My wife bears my name.

To the 11th he answers: I cannot fix the ages of any of Collins's children.

To the 12th he answers: I believe these children to have been Collins's. I never heard any thing said against the good conduct and fidelity of Elizabeth as a wife. She never told me the children were Collins's; I never doubted it, and hence never thought of inquiring about it.

To the 13th he answers: I do not recollect seeing Sidney E. Collins as early as that year. I do not know who christened him.

To the 14th he answers: I know nothing further. These matters, of which I have been questioned, occurred a long while ago, and nothing has occurred to induce me to think often about them; my recollection, therefore, is extremely confused and uncertain about them.

his
JACO ✕ LADNER.
mark.

I, Rufus R. Rhodes, commissioner named in the attached commission, do certify that the said witness, Jaco Ladner, named in the same, came before me, and having been duly sworn to answer and depose the whole truth, did depose as before stated; that the answers were taken down by me, and the witness subscribed in my presence.

Witness my hand and seal this 26th day of March, A. D. 1845.

RUFUS R. RHODES. [L. S.]

I, Rufus R. Rhodes, commissioner named in the attached commission, hereby certify, that three of the witnesses named therein, viz: Symon St. Cyr, Baptiste Ela, and William Seaman, are dead; and that two others, Samuel Ware and James Ware, testify that they know nothing of the matters inquired into by the interrogatories and cross interrogatories attached thereto.

Witness my hand and seal this 26th day of March, A. D. 1845.

RUFUS R. RHODES. [L. S.]

Testimony of Elizabeth Lanier.

UNITED STATES OF AMERICA,
Southern district of Alabama, circuit court of the United States:

To Edward T. Branch, B. Townsend, George W. Miles, Jackson H. Griffin, Samuel W. Mybrant, or either one of you.

Know ye, that having full confidence in your integrity and skill, we have appointed you, and do give you, and every one of you, full power and authority to examine Elizabeth Lanier, a witness for the plaintiff in a cause pending in the circuit court of the United States, in which Sidney E. Collins is plaintiff, and William R. Hallett and Robert L. Walker, executors of the last will and testament of Joshua Kennedy, deceased, J. H. Hastie and wife, A. R. Meslier and wife, John G. Aiken and wife, Joshua Kenedy and Augustus Kenedy, James Innerarity, Samuel Kitchen, Wm. Kitchen, James Campbell, and the Branch of the Bank of the State of Alabama, at Mobile, are defendants, on the interrogatories and cross interrogatories annexed to this commission. And we do hereby give you full power to cause said witness to come before you at the time and place you designate, and then and there, on her corporal oath, to obtain her answers to the same, which you will reduce to writing, cause the said witness to subscribe the same, and to seal the same up under your hand and seal, and return it into our said circuit court with this commission.

Witness Hon. Roger B. Taney, chief justice of the Supreme Court of the United States, the fourth Monday of December, 1844, and of American independence the 69th year.

Issued this 3d day of March, 1845.

JOHN FITTS,
Cl'k C. C. southern dist. Ala.

Commission allowed. WILLIAM CRAWFORD, *Judge*.

Interrogatories to be submitted to Elizabeth Lanier, a witness for the plaintiff, in a case pending in the circuit court of the United States, for the southern district of Alabama, in which Sidney E. Collins is plaintiff, and William R. Hallett and Robert L. Walker, executors of the last will and testament of Joshua Kennedy, deceased, J. H. Hastie and wife, John G. Aiken and wife, A. R. Meslier and wife, Augusta Kenedy, Joshua Kenedy, Samuel Kitchen, Wm. Kitchen, James Innerarity, James Campbell, and the Branch of the Bank of the State of Alabama, at Mobile, are defendants.

1st. Are you the mother of Sidney E. Collins, the plaintiff in this suit; what was the name of his father; when and where were you married to his father; how many children were born after your marriage with him; what was their names, and which of them are now living, and which are dead; when did any or either of them die, and at what place.

2d. When was your oldest son, George, born; when was Sidney E. born, and at what place; did George ever marry; did Joseph Collins, your son, ever marry; if yea, have either left any children.

3d. Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause; if yea, set forth the same fully and at large in your answers.

CAMPBELL & CHANDLER, *for Plaintiff.*

Cross interrogatories to be submitted to Elizabeth Lanier, in the before *entitled* case.

1. Are you the woman once called Elizabeth Wilson, who lived at Pascagola; did you live with Joseph Collins; with whom did you live before you lived with Joseph Collins; when did you take your present name; when you married Mr. Lanier, did you marry him by this name, or did you then bear the name of Elizabeth Collins or Elizabeth Wilson?

2. If you speak of the death of any of your children, please to say if you know of such fact of your own knowledge, or from hearsay; when and where did George die; and when and where did Joseph die; and where were you living at both of those times?

3. If you speak of being married to Joseph Collins, state exactly what took place, that you call a marriage; was that what was customary in contracting a marriage in the country at the time; was there not something farther intended or contemplated at the time to be done afterwards, in order to make the said marriage legal; did you not confidently expect it would be done, and on whose assurance; if so, state whether what was so expected was afterwards done; what further act or thing was contemplated, in order to perfect your said marriage?

4. Was George Collins born before or after your said marriage; how long before or after?

5. At what time did Joseph Collins die; who attended his funeral; who made his coffin; who built the house in which Joseph Collins lived; how long was Joseph Collins sick before he died?

6. Did Joseph Collins at any time after you lived with him call or style you Miss Wilson or Elizabeth Wilson; did he so style you in any written instrument; did he make any conveyances of property to you in his last illness, or shortly before his death; if so, were such conveyances made by Joseph Collins voluntarily, or at your request; why was such conveyance deemed necessary?

7. What provision did Joseph Collins make for you in his will or otherwise, before his death; did he give you real or personal property; if so, what and where was it? Do you expect any benefit from the plaintiff's proceedings in this suit?

8. Did you know old Mr. Faragut; did he ever officiate to perform the marriage ceremony; if so, were you ever present at any marriage where he so officiated; and whose marriage was it, and when?

9. What caused Joseph Collins' death; did he die suddenly, or how long was he sick; was there any priest a day or more with him shortly before his death; who was it?

10. Was there any mark on the person of George E. Collins, your son, that a mother would be likely to notice? Describe it.

11. Where do you now reside, and with whom; what property have you; *who* many children that are dependant on you, and their ages; what are your means of support?

12. Did you have any of your children christened; was Sidney Collins christened by Father Burgois, or Vargois; who was his godfather or godmother?

13. State exactly the time when you were married to Lanier, and the date of the birth of your first child of said marriage.

14. What is the distance from the Bayou Derica to the place at which Joseph Collins died; how old are you now; when did you leave Pascagola; where have you been ever since; do you know Mrs. Lewis, the wife of Edwin Lewis, late Margaret Baudreaux; what are the names of her children, and how old are they; were you acquainted with Don Martin Pelerin, at Pascagola; what noticeable transaction had Joseph Collins with him when you were present, and how did it concern you?

15. State for what old Mr. White required you to leave his house unless Collins married you; did you leave accordingly, and how long thereafter?

16. After your marriage with Lanier, did you or said Lanier sell to any person any property which you had received from Joseph Collins; if so, what was it, and to whom was the sale made; did you ever speak of reclaiming said property, and to whom did you so speak; what counsel did you consult, and what was his advice?

17. Did you or not hear Joseph Collins before his death speak of its being necessary to make a will in order that his children might get his property; did he not manifest some anxiety about having a will made; did he send for any person to consult about it, and were you present at such consultation; what was said between him and his friend on that occasion; what person visited him on that occasion in company with his legal advisers?

18. How far did you live from Mrs. Mary Banque (late Beaudreaux); what are the ages of her children, Zeno and Therese; how long after Sidney Collins was born was said Zeno born; did you at any time see the two put into the same cradle together; how old were they then; what remark did you make about it?

19. Do you know, or can you set forth, any other matter or thing

which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answers.

STEWART & EASTON,
For defendants.

REPUBLIC OF TEXAS, *county of Liberty:*

By virtue of the commission hereto attached, and which is returned into the circuit court of the United States for the southern district of Alabama, from which it issues, I, Jackson H. Griffin, one of the commissioners therein named, and in no wise connected with the plaintiffs or defendants, or interested in the event of this suit, did cause Elizabeth Lanier, the witness named in the same, to come before me, and she having been duly sworn to testify and depose the whole truth in answer to the interrogatories and cross interrogatories, doth answer and depose as follows:

Testimony of Elizabeth Lanier.

To the first interrogatory she answers: I am. His father was named Joseph E. Collins; that she was married to Joseph E. Collins in the year 1805, at Pascagoula, in the house of Dr. James White; that she had four children and one miscarriage, by his father Collins; the eldest was named Geo. E., the 2d died shortly after its birth and was not named; the next a miscarriage; the next was Sidney E. Collins, and the next and last was Joseph. Sidney E. Collins is now living; Geo. E. and Joseph Collins are both dead, as deponent believes. Joseph died at Pascagoula at one Duprees, at about eight years old; Geo. E. Collins died at Arkansas, in the year 1842, as deponent has been informed and verily believes.

2d int. Geo. E. Collins was born in the year 1806, to the best of her belief, never having kept a record of the ages of my children. Sidney E. was born in the year 1809, at Pascagoula. Geo. E. never married. Joseph never married.

3d interrogatory. I do not know what may be of benefit to the parties at issue in this cause, or either of them; but will state this, that about the year 1801, my father, William Wilson, being in bad health, went to Pascagoula for his health with his family, consisting of two daughters and a son; and some time in the year 1802, deponent went to live in the family of Dr. James White; that in the latter part of the year 1803, or the commencement of the year 1804, I became acquainted with Capt. Joseph Collins; that he made proposals of marriage, to which I assented, provided Dr. White and lady would consent, (which consent was obtained,) I having considered Dr. White and lady as my protectors; after which, in the year 1805, Capt. Joseph E. Collins and myself were married, and lived together up to his death, which occurred in the year 1811.

her
ELIZABETH ⋈ LANIER.
mark.

Sworn to and subscribed before me, this 31st day of March, 1845.
J. H. GRIFFIN, *Com.*

Cross interrogatories.

1. Cross int. Answer. I am. I did, as my husband lived part of the time with my father and Dr. James White's family. In 1812, married Mr. Lanier by the name of Elizabeth Collins, and bore the same.

2d interrogatory. I was not at the death of either Geo. or Joseph, but have been informed that they were dead. George and Joseph both died, as answered in first interrogatory; at the time Joseph died I lived at Pascagola; at the time of George's death I lived on Red River, in the State of Louisiana.

3d cross interrogatory. I was married to Mr. Joseph Collins by Dr. James White, who officiated in the capacity of Syndic, and marriage rites thus solemnized was customary and binding. There was nothing further contemplated to be done afterwards to make the marriage legal, nor neither did I expect it would be done, nor never heard the legality of the marriage doubted until in the present suit.

4th interrogatory. George Collins was born twelve months, or about that time, after my marriage with Collins.

5th interrogatory. Joseph Collins died in the year 1811; John Beaudreaux and Margaret Beaudreaux, and others, were at the burying whose names I do not recollect. Don't know who made the coffin; Baudreaux assisted in making it. The house was built by Maj. Goodwin, (father of Benjamin and Allen Goodwin;) Mr. Collins was sick in all about five months before he died—the first three months in New Orleans, and the latter time at home.

6th int. Never knew or heard of his styling me Miss Collins, or Elizabeth Wilson, until he read his will to me; in the will he did. He made no conveyances of property except that mentioned in his will. I knew nothing of the property being left me until Mr. Collins read me the will. I do not know what influenced him to make such conveyances as I have mentioned.

7th int. I recollect three tracts of land left me in his will. I refer to my answer in the 6th cross interrogatory above. One tract of the land was at or near Gordon's bluff, on the river Pascagoula; one tract on Black creek, one of the tributaries of Pascagoula; and the third tract in the State of Ohio. I do not expect any benefit from the plaintiff succeeding in this suit.

8th int. Knew one George Faragut. I never was present when he officiated at any marriage ceremony, except my own, when myself and Mr. Lanier were married, which occurred in the year 1812.

9th int. Died of the dropsy. I refer to my answer in the 5th cross interrogatory. There was no priest or other holy person with him.

10th int. There was no mark except his general features.

11th int. Reside in the Republic of Texas, and county of Liberty, with the family of Dr. James M. Clayton; have no property and no

children who are dependant on me. My support I make by my industry and kindness of friends.

her
ELIZABETH X LANIER.
mark.

Sworn to and subscribed before me, this 31st day of March, 1845.
J. H. GRIFFIN, *Commissioner.*

12th cross int. I had them all christened; I have no child called Lenny Collins; if you mean Sidney E. Collins, he was christened by a priest whose name I do not recollect; Andrew Fullnia was his godfather, and I think his wife was Sidney's godmother.

13th int. I was married to Lanier in the year 1812, some time in the month of August; first child was born in the month of June, 1813.

14th. About two hundred and fifty yards, as near as I can guess; about sixty years old. Left Pascagola about 1812; a part of the time I lived in Louisiana, (say three years;) then moved to Texas, and remained about ten years; returned to Louisiana, and remained there near four years, and removed to Texas, where I have resided ever since. I knew Mrs. Lewis, of whom you speak; I recollect two of her children, Alfred and Elizabeth, (or Lieze;) I do not know their ages. I did not know Don Martin Pelerin. And know of no transaction of any kind between him and Joseph Collins.

15th int. Mr. White never required me to leave his house.

16th int. Mr. Lanier sold two tracts of land, one tract to Rodney Cooper, and the other to one of the Rodneys; do not know which one. I never spoke of reclaiming the land.

17th int. Heard Mr. Collins say he wished to make a will, and sent for Mr. Lewis to draw it. Did not hear Mr. Collins say why he wished to make a will. Sent for Lewis as above stated; I heard no consultation between him and Lewis. There was no one present but Mr. Lewis, when he made his will.

18th cross int. I lived about three miles from Mrs. Mary Bonque. Do not know the ages of Zeno or Therese. I think Zeno and Therese were both born before Sidney; never saw them both put into a cradle together, and I am satisfied they never were.

19th int. I do not know of any thing that will benefit or be an advantage to the parties, or either of them; but will state that about three days before Mr. Collins died he called me into the room and read his will, which was the first time I had any knowledge of its conditions. Mr. Collins stated no reasons why he was influenced to *to* wording the will in the manner he did, nor neither do I know what influenced him to do so.

her
ELIZABETH X LANIER.
mark.

Sworn to and subscribed before me, this 31st day of March, A. D. 1845.

J. H. GRIFFIN, *Commissioner.*

REPUBLIC OF TEXAS, *county of Liberty:*

I, Jackson H. Griffin, do certify to the honorable the circuit court of the United States, for the southern district of Alabama, that I have executed the foregoing commission by requiring the said witness to come before me in the county of Liberty aforesaid, on the 31st day of March, 1845, and I did then and there examine her on her oath as a witness on the interrogatories and cross interrogatories herewith returned. I further certify, that her answers were taken down by me, and subscribed by said witness in my presence.

All of which I certify, under my hand and seal, this 31st day of March, A. D. 1845.

J. H. GRIFFIN, [SEAL.]
Commissioner.

Benjamin Lanier's testimony.

United States of America, southern district of Alabama, circuit court of the United States, for the fifth judicial circuit and southern district [of] Alabama.

SIDNEY E. COLLINS
vs.
HALLETT AND WALKER, executors, et al.

In chancery.

Whereas in a certain cause now pending in said court, wherein Sidney E. Collins is plaintiff, and William R. Hallett and Robert L. Walker, executors of the last will and testament of Joshua Kennedy, deceased, John H. Hastie and Secluda, his wife, Augustus R. Meslier and Mary, his wife, John G. Aikins and Clarissa, his wife, Augusta Kennedy, Joshua Kennedy, et al., are defendants.

The honorable William Crawford, judge of said court, by his order in the cause aforesaid, authorized and empowered the issuance of a commission to any, or either, of the commissioned heretofore appointed to take testimony in the cause. Now, therefore, in consideration of the powers granted in the said order to the clerk of this court, the commissioners named in any of the commissions heretofore issued in the said cause for taking testimony in the same, are hereby clothed and invested with full power and authority for taking testimony in the said cause as fully and absolutely as if the commissions under which they have acted had not been returned into court, and this shall be their warrant for so doing. And they are hereby required to cause the witnesses to be produced before them, and to examine them on their oaths to depose and testify to the whole truth. That they shall take down the testimony under their hands, and cause the same to be subscribed by the witnesses, and to seal the same under their hands and seals, and return the same into our said court.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, and the seal of said circuit court, this third

Monday of April, in the year of our Lord one thousand eight hundred and forty-five.

Issued the eighteenth day of August, A. D. 1845.

Attest: JOHN FITTS, *Clerk*
C. C. southern district Alabama.

United States of America, southern district of Alabama, circuit court of the United States, for the fifth judicial circuit and southern district of Alabama.

SIDNEY E. COLLINS
vs.
HALLETT AND WALKER, executors, et al.

In chancery. To John H. Griffin, esq., greeting:

Whereas, in a certain cause now pending in said court, wherein Sidney E. Collins is plaintiff, and William R. Hallett and Robert L. Walker, executors of the last will and testament of Joshua Kennedy, deceased, John H. Hastie and Secluda, his wife, John G. Aikin and Clarissa, his wife, Augustus R. Meslier and Mary, his wife, Joshua Kennedy, Augusta Kennedy, et al., are defendants; an order has been made by the Hon. William Crawford, judge of said court, extending the time to the parties to the said cause to take testimony in the same until the first day of October next. And whereas he has further ordered, that commissions may be issued for taking further testimony to any of the commissioners who have been named in any of the commissions heretofore issued in the cause. Now, therefore, know ye, that in confidence of your prudence and fidelity we have appointed you, and by these presents do give you, or any one or more of you, full power and authority to examine Benjamin Lanier as a witness in the cause aforesaid. And, therefore, we command you, or any one or more of you, that you do cause the said Benjamin Lanier to come before you, or any one or more of you, and then and there examine him upon his corporal oath, upon the interrogations and cross interrogations hereunto annexed, as a witness in the cause aforesaid; and that you, or any one or more of you, do take such examination, and reduce the same into writing, and return the same annexed to this writ, closed up under your seal, or the seal or seals of any one or more of you, into our said court with all convenient speed.

Witness the Hon. Roger B. Taney, chief justice of the Supreme Court of the United States, and the seal of said circuit court, this third Monday of April, in the year of our Lord one thousand eight hundred and forty-five.

Issued this eighteenth day of August, A. D. 1845.

Attest: JOHN FITTS, *Clerk C. C.*
Southern district Alabama.

Interrogatories to Benjamin Lanier.

Interrogatories to be exhibited to Benjamin Lanier, a witness for the plaintiff in a cause pending in the circuit court of the United States, in which Sidney E. Collins is plaintiff, and W. R. Hallett and Robert L. Walker, executors of the last will and testament of Joshua Kennedy, deceased, J. H. Hastie and wife, A. R. Meslier and wife, J. G. Akin and wife, Augusta Kennedy, and Joshua Kennedy, James Campbell, James Innerarity, Samuel Kitchen, W. Kitchen, and the Branch of the Bank of the State of Alabama, are defendants.

1. Are you acquainted with Sidney E. Collins, the plaintiff in this suit, and were you acquainted with George Collins and Joseph Collins, his brothers, while they were in life; when and where were those persons born; where did they reside prior to their removal to Alabama; when did they, or either of them, come to reside in Alabama; how long did they so reside, and what was their occupation or employment while there; when did Joseph and George die; were either of them ever married, and did either leave children of their marriage?

2. Were you at any time administrator of the estate of Joseph Collins, their father; did you have any papers relating to a lot in Mobile, situated on the river Mobile, and between Royal and St. Lewis streets and the Orange Grove tract; if so, what did you do with those papers, and when did you last see them?

3. Did you have any intercourse with Joshua and W. E. Kennedy, or either of them, on the subject of those papers, or the title to that lot; when and how often did you have such intercourse, and state what passed between you, and either of you at the time.

4. Did you have any intercourse with the defendant, Innerarity; do you know of any claim of his to the lot, and did he ever disclose to you, or to the plaintiff, within your knowledge, of the state of the title?

5. Did Joshua or W. E. Kennedy explain to you the nature of any claim they had to the lot, and what did they say relative to it?

6. Will you state if you had any intercourse with George, or with Sidney E. Collins, on the subject of the title, prior to their conveyances to Kennedy; did you explain to them the intercourse that Kennedy had with you on the subject; were you informed of Kennedy's negotiations with them at the time they were pending?

7. Will you state any other matter or thing within your knowledge material to the issue between the parties, or which will seem to explain your testimony, or which will benefit the parties to this cause? Answer fully and at large.

The defendants excepting to the whole of these interrogatories as irrelevant, propose, if any of them be answered by the witness, the following cross *cross* interrogatories to the same.

Cross interrogatories.

1. When did you administer on the estate of Joseph Collins; by what court were letters of administration granted to you; who did you give as your security as administrator?

2. Do you know of the death of George Collins and Joseph Collins yourself, or only by information; what are the grounds of your belief on that subject; do you know that neither of them was ever married, or only believe so from information and repute?

3. Specify particularly the papers which you allude to in your answers to the 2d and 3d direct interrogatories; explain minutely what those papers [were;] were they recorded or not?

4. Were you guardian of either George, Sidney, or Joseph Collins?

5. Do you know of any negotiations having been pending between Joshua or Wm. E. Kennedy and the Collins?

6. How many children has Mr. Lanier had since the death of Joseph Collins; what are their names; where were they severally born; when were they christened or baptized, and by whom; where was the register of their baptism made?

7. When were you married to Mrs. Lanier, and by whom; was there a marriage license taken out; by what name was Mrs. Lanier called in the marriage license; by what name was she married to you?

8. State the place of nativity of Mrs. Lanier, late Elizabeth Wilson, according to the best of your knowledge, information, and belief.

9. Were you acquainted with Mrs. Lanier before the death of Joseph Collins; did you know the reputation of the neighborhood as to said parties being married or not married during their cohabitation; what was the reputation or belief, so far as you learned it, in that respect?

10. Has not Mrs. Lanier informed you herself, or stated to you, that she never was married to, or was the wife of, Joseph Collins; on what occasion was that statement made?

11. If you know any thing material to this cause, or to either of the parties, or tending to explain the testimony given by you, answer fully and at large.

STEWART & EASTON,
For defendants.

Testimony of Benj. Lanier.

REPUBLIC OF TEXAS, *county of Liberty:*

We, J. H. Griffin and S. W. Wyhants, commissioners named in a commission heretofore issued from the circuit court of the United States for the southern district of Alabama, in a case pending in the said court, in which Sidney E. Collins is plaintiff, and William R. Hallett and Robert L. Walker, executors of the last will and testament of Joshua Kenedy, deceased, and J. H. Hastie and wife, A. R. Meslier and wife, J. G. Aikin and wife, and others, are defendants; and by virtue of the commission here attached and returned with the answers, we have caused Benjamin Lanier, the witness named in this commission, to come before us, who, being duly sworn by us to testify and depose to the whole truth upon the interrogatories and cross interrogatories hereto attached, did answer as follows:

1. To the first he says: I am acquainted with Sidney E. Collins, and was acquainted with George and Joseph Collins, his brothers,

while in life; those persons were born in the county of Jackson, in Mississippi, (as I have been informed,) and resided in Mississippi up to 1828, when George and Sidney removed to Mobile, Joseph having died before in Mississippi; George was a printer by trade, and Sidney a carpenter, (as I have been informed;) Joseph died in Mississippi about 1823 or '4, and George died in Arkansas in the year 1838 or '9; both died without having been married; George was born in 1807, and Sidney in 1809, as I have understood.

2d. To the 2d he says: I was administrator of the estate of Joseph Collins, their father; I had some papers relating to the lot described in this interrogatory; those papers were given by me to Wm. E. Kennedy, and consisted of field notes of surveys of that lot and another tract of land in or near Mobile; Mr. Kennedy produced an agreement with Collins, which proved to me that he was interested in the land, and I gave them to him, and took his receipt, [which] I gave up to my successor in the administration of the estate of Collins.

3d. To the 3d he answers: I had several conversations with Wm. E. Kennedy in his life, and with Joshua Kennedy, upon the subject of the claims of Collins to lands in Mobile. In 1828 I visited Mobile, at that time Joshua Kennedy proposed to me to come to Mobile to reside. He stated that he would have me appointed administrator of the estate of Collins, and desired that we should have secure the claims of Collins to the lands by that means. The water lot before mentioned was particularly referred to; I was to act in the administration according to his advice, and he told me that he would make me independent. I stated to him that I would not do any thing to prejudice the heirs of Collins; whereupon he said he thought the better of me, and that Wm. E. Kennedy's heirs had a better title to the lands than Collins; that he was anxious to save them from a troublesome law suit, and it was for that reason he was willing to give the heirs of Collins something for their title. Joshua Kennedy advised with me upon the propriety of joining him, and said that Collins's friends had not treated me well in Mississippi in taking the administration out of my hands, and if I could make myself independent, I ought to do it in self defence; I understood both from Wm. E. and Joshua Kennedy, of the claims of Collins to the lands on the river, and of another tract on Three-mile creek.

4th. To the 4th he says: I never had any conversation with Inerarity on the subject.

5th. To the 5th he says: Joshua Kennedy did not explain to me the nature of the claims he spoke of; Wm. E. always professed to claim under an agreement between him and Collins, so far as my recollection serves me.

6th. To the 6th he says: He never said anything to the children about it, and knew nothing about Kennedy's intercourse with them.

7th. To the seventh: He knows nothing that will benefit either of the parties. But will state that, previous to 1828, I moved from Jackson county, Mississippi, to the State of Louisiana, and in said year, '28, I

was on a visit to Mobile upon private business; after the conversation above mentioned took place, I visited A. McNairy, who was the guardian of Sidney E. Collins; I informed him of Kennedy's propositions to me, and was satisfied from his conversation upon the subject that he was interested with Kennedy. My business and my family required my attention at home; after which time I moved to Texas, and know nothing further upon the subject.

Cross interrogatories.

1st. To the first cross interrogatory he says: I think it was in the year 1813 I was appointed by the probate court, Thomas Bibb was judge. I gave Benjamin Goodwine and Allen Goodwine.

2d. To the 2d he says: I only know it from information; my grounds are founded upon the best of information. Joseph died when he was a child; and I never heard of George being married.

3d. To the third he says: That they were field notes of surveys as before stated; I do not think they were recorded; Wm. E. Kennedy stated that was what he wanted with them, to have them recorded in Mobile.

4th. To the fourth he says: I was not guardian to either of the persons named.

5th. To the 5th he says: He knows nothing.

6th. To the 6th he says: She has had five since; Amelia, Matilda, Eliza, Samuel, and Louisa; they were all born in Jackson county, Mississippi; the four first were christened by a catholic priest at Pascagola. Louisa, the last, was christened by a catholic priest in Texas. I do not know that any register ever was made.

7. To the seventh he says: I was married in Jackson county, Mississippi, to Mrs. Lanier; we were married by George Farragut; there was no marriage license taken, and I married her as Mrs. Collins.

8. To the 8th he says: He was not acquainted with her until after the death of Collins; her statements are, that she was born near Natchez, in the State of Mississippi, *Mississippi:* at an early age she went to live with Dr. James White, and that she remained there until she was married to the said Collins.

9th. To the 9th he says: I was not; I know nothing of the neighborhood report as to the marriage of said parties.

10th. To the tenth he answers: That she never did; to the contrary, she always told me that she was married by Dr. James White.

11th. To the 11th he says: I know nothing by way of explanation to the 7th cross interrogatory; that that portion of Pascagola where we were married, was at that time under the laws of Louisiana; it was customary at that time for parties wishing to marry to go before a parish judge, or some person appointed to act in his place, and get married without a license; after which custom we were married. Some two or three years after, I was indicted for living in adultery, and

was brought before the circuit court, Judge Tollman presiding, who decided that the marriage was legal, and I was acquitted.

his
BENJAMIN ✕ LANIER.
mark.

Sworn to and subscribed before us, this 8th day of September, A. D. 1845. J. S. GRIFFIN.

We, J. S. Griffin and S. W. Wyhants, appointed by a commission duly issued from the circuit court of the United States, for the southern district of Alabama, in the cause in which Sidney E. Collins is plaintiff, and Wm. R. Hallett and Robert L. Walker, executors of the last will and testament of Joshua Kennedy, deceased, and others, are defendants, do certify, that we caused Benjamin Lanier, the witness named [in] the commission hereto attached, to come before us, and that he was sworn to testify and to depose the whole truth to the interrogatories and cross interrogatory in the cause, and his answers we took down in writing, and caused him to subscribe to the same by making his mark, (he being too blind to write his name,) and swear to the same. And do hereby certify them under our hands and seals.

J. H. GRIFFIN, [SEAL.]
SAM'L W. WYHANTS, [SEAL.]
Commissioners.

September 8, 1845.

D. White's testimony.

THE UNITED STATES OF AMERICA,
Southern district of Alabama.

To Charles M. McRae, Wm. C. Micon, or any judge or justice of the courts of the United States, or of the superior or supreme court of any State, any chancellor, mayor, or chief magistrate of a city, or judge of a county court, or court of common pleas, of any of the United States.

Know ye, that reposing full confidence in your prudence, fidelity, and skill, we have appointed you, and do give you, and each and either of you, full power and authority to take the depositions of the Hon. E. D. White, on interrogatories and cross interrogatories in a certain cause pending in the circuit court of the United States, for the southern district of Alabama, in which Sidney E. Collins is plaintiff, and Wm. R. Hallett and Robert L. Walker, executors of the last will and testament of Joshua Kennedy, deceased, and John H. Hastie and his wife, Augustus R. Meslier and his wife, John G. Aiken and his wife, Augusta Kennedy, and Joshua Kennedy, James Innerarity, Samuel Kitchen, Wm. Kitchen, James Campbell, and the Branch of the Bank of the State of Alabama at Mobile, are defendants; and we do require you, or some one of you, to cause the witness aforesaid to come before you, or some one of you, and to take the examination of said witness under oath, to reduce his answers to writing, and to cause him to subscribe the same;

which being done, you will enclose the same, under your hand and seal, to our said circuit court.

Witness Hon. Roger B. Taney, chief justice of the Supreme Court of the United States, and the seal of the court, this 4th Monday of December, 1844.

Issued 1 March, 1845.

JOHN FITTS,
C. C. southern dist. Ala.

Commission allowed:

WM. CRAWFORD, *Judge.*

THE U. S. OF AMERICA.

Interrogatories to be submitted to the Hon. Edward D. White, a witness for the plaintiff in a certain cause pending in the circuit court of the United States, for the southern district of Alabama, in which Sidney E. Collins is plaintiff, and Wm. R. Hallett and Robert L. Walker, and the heirs of Joshua Kennedy, deceased, James Campbell, James Innerarity, and others, are defendants.

1. Were you acquainted with Joseph Collins, formerly a resident on the Pascagoula river, in the former province of West Florida, and with Elizabeth Wilson, his wife; will you state when and where your acquaintance with them commenced, and how long it continued?

2. Were you present at the marriage of Joseph Collins with Elizabeth Wilson; when and where did it take place; state whether the marriage ceremony or contract was performed in your father's house.

3. Do you know of the said Collins having cohabited with the said Elizabeth; how many children did they have; what were their names; when were they born; and when did Joseph, their son, die?

4. When and where did Joseph Collins die?

5. Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the matter at issue? State fully and at large all you may know.

CAMPBELL & CHANDLER,
For Plaintiff.

In the circuit court of the United States, southern district of Alabama.

SIDNEY E. COLLINS,
vs.
HALLETT & WALKER, Executors of Joshua Kennedy, and others.

Cross interrogatories to be propounded to Edward D. White, a witness for the plaintiff in the above entitled cause.

1 cross interrogatory. What is your age at this time; where did you live from the year 1806 to the year 1813?

2 cross interrogatory. If you speak of any marriage between Joseph E. Collins and Elizabeth Wilson, please to state if you were present at the same, and what other persons were present; in whose house did it take place; who officiated or performed the marriage ceremony; what

was that ceremony, or what was done that you style a marriage; describe it all particularly; was there any bans or notice of said marriage published or made public; if yea, where, how, and for what length of time was it published; was there any record made of said marriage; if yea, where was said record made?

3 cross interrogatory. If you speak of the ages of George, Sidney E., and Joseph Collins, state in what way you are enabled to remember their exact ages; how much older was George Collins than Sidney E. Collins; how much younger was Joseph, the third child of Elizabeth Wilson, than Sidney E. Collins; was said child Joseph born before the death of Joseph E. Collins; if yea, how long before Joseph E. Collin's death was he born?

4 cross interrogatory. Did Joseph E. Collins at any time remove to a place called the Bayou Derien; if yea, when did he so remove; how long did he continue at that place; when did he remove to the place where he died; was Sidney E. Collins born at your father's, at Joseph E. Collin's residence at the Bayou Derien, or at the place where Joseph E. Collins died; where was Sidney born?

5 cross interrogatory. At which of the places named in the last preceding cross interrogatory, or if at neither of them, then *where* was Joseph, the youngest child, born?

6 cross interrogatory. When did Elizabeth Wilson marry Lanier; how long was it after Joseph E. Collins' death; by whom was the marriage ceremony performed?

7 cross interrogatory. If you speak of any marriage between Joseph E. Collins and Elizabeth Wilson, please to state any fact you may know tending to shew that the same was a pretended or sham marriage, and not a legal one. Was not the said Elizabeth Wilson for some time previous living at your father's house; was not your father in his family greatly aggrieved by the discovery of an illicit connexion having before that time subsisted between said Joseph E. Collins and said Elizabeth Wilson; was not such illicit connexion discovered to have existed; did not your father, upon such discovery, forbid the farther visits of Collins at his house, or otherwise signify his displeasure; what did your father do on that occasion; do you not know, or have reason to believe, that the marriage spoken of was a temporary and informal one, made at the suggestion of your father, or some one else, to save the character of Miss Wilson, or for other benevolent purpose, until a lawful marriage could be had; and that it was not consummated, or supposed by the parties to be consummated, in a legal manner; was not what then took place done in anticipation of a marriage to be afterwards had, and until the parties were married; were any of the neighbours invited to said marriage that you know of; was it public or private? If you believe the said marriage, for any of these reasons, or others, was in fact a pretended or illegal, and not a legal marriage, please to state fully the facts and the reasons on which your belief is founded.

8 cross interrogatory. If the said marriage was not a sham or pre-

tended one, please to state whether what took place between the parties at the time, was not known or supposed to be insufficient to perfect the marriage; and if something further was not designed or contemplated to be done, in order to perfect the same; if yea, what was so contemplated; and was what was so contemplated ever done or accomplished?

9 cross interrogatory. What information or statement on the subject of the two preceding (the 7th and 8th) cross interrogatories did you give to Mrs. Margaret Lewis, (late Margaret Beaudreaux,) or to other persons, or was so given in your presence? What was said about it in your father's family?

10 cross interrogatory. Do you or not know of Joseph E. Collins at any time admitting that he was not legally married to Elizabeth Wilson; did he ever, after said marriage, call or speak of her as Miss Wilson or Elizabeth Wilson; did he so ordinarily; was she not so designated by others; do you know of his having executed to her or other person, any deed or other writing after said marriage, in which she was called Elizabeth Wilson; was there at Pascagoula, at that part of West Florida, in the year 1811, any other person by the name of Joseph Collins, or Elizabeth Wilson, except those spoken of by those names in the previous portions of your depositions?

11 cross interrogatory. Do you know whether Sidney E. Collins is now living or dead; when did you last see him; when did you hear from him last; and where was he then; and where is he now?

12 cross interrogatory. Please to discover, if you know, who are the persons interested in the prosecution of this suit, or to be benefitted by it; what has been stated to you, and by whom; who has applied to you for information, or written to you on the part of the plaintiff? Please to attach to your deposition all such letters, or copies of them certified by you.

13th cross interrogatory. Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at length in your answer.

STEWART & EASTON,
Solicitors for Hallett, Walker, et al.

STATE OF LOUISIANA, *Parish of Lafourche Interior.*

By virtue of a commission hereunto annexed, and to me directed, from the honorable circuit court of the United States of America, southern district of Alabama, I, James R. Scudday, mayor of Thibodeaux, in the aforesaid parish and State, have caused the Hon. Edward D. White, the witness named in the commission, to come before me this tenth day of March, A. D. 1845, at my office, and after having sworn the said witness according to law, in a certain cause pending in the aforesaid court, wherein Sidney E. Collins is plaintiff, and William R. Hallett and Robert L. Walker, executors of the last will and testa-

ment of Joshua Kennedy, deceased, and John H. Hastie and his wife, Augustus R. Meslier and his wife, John G. Aikin and his wife, Augusta Kennedy and Joshua Kennedy, James Innerarity, Samuel Kitchen, William Kitchen, James Campbell, and the Branch of the Bank of the State of Alabama at Mobile, are defendants.

Testimony of Edward D. White.

The said Edward D. White answers as follows:

To the 1st interrogatory witness says: That he was acquainted with Joseph E. Collins, (commonly called Captain Collins,) formerly a resident at Pascagoula, and with Elizabeth Wilson, his wife. His acquaintance with them commenced in the year 1804, and continued from that time to this; though he has not seen either of them for many years, and believes that Captain Collins has been dead for a long time.

To the 2nd interrogatory he says, that he has no recollection of having been present at the marriage of the said Joseph E. Collins with Elizabeth Wilson; nor can deponent assert, as a fact of his own personal knowledge, when and where the marriage took place.

To the 3d interrogatory he says: That he knows that the said Collins lived with the said Elizabeth Wilson as his wife, and that the fruit of their union was some children, which the community regarded as their children, and which they, Collins and Elizabeth Wilson, acknowledged and treated as their children. Herein deponent speaks more particularly of George E., who was born while deponent lived at Pascagoula, and whom the said Captain Collins always treated and spoke of as his son, just as every one else treats and speaks of his lawful and undoubted offspring. The names of the children as recollected by deponent were George E., Sidney, and Joseph. George E. was born in 1806, at least if his birth was not in 1806 it could have been but very little before or after that year. Deponent knows nothing as to the time when the other children were born, seeing that he left Pascagoula towards the close of 1807; nor does deponent know any thing as to the "when his son Joseph died."

To the fourth interrogatory he says: That he does not know when or where said Joseph E. Collins died.

To the fifth interrogatory he says: That without pretending to judge of what may be a benefit or advantage to the parties, he will state all that he knows touching the subject matter; which is, that about the year 1804, or thereabouts, deponent went to Pascagoula, where his father had been living for some time previous. Elizabeth Wilson was then a young woman, living in the family of deponent's father. Witness soon became acquainted with Joseph E. Collins, called Captain Collins, who was a surveyor, and who frequently came to Pascagoula, and generally to the house of deponent's father. About the year 1805 (deponent cannot be very accurate as to the date) the said Captain Collins took unto himself the said Elizabeth Wilson for a wife, and had by her a son named George Emily, born before deponent left Pascagoula.

When deponent says that Captain Collins took Elizabeth Wilson for his wife, deponent has no allusion to marriage ceremonies, things of which deponent was not of an age to know much about, or to attend much to, (deponent was then about twelve or thirteen years of age;) but what deponent means is, that they lived together as man and wife; that they were regarded by people generally as man and wife; that deponent always looked upon them as man and wife, nor ever, to his recollection, heard the fact of their being lawful man and wife controverted, until he heard of it in this suit.

Deponent went back to Pascagoula in 1820, when he found the widow Collins, Elizabeth Wilson, married to Lanear, and where he saw Sidney and Joe, who were then boys.

E. D. WHITE.

In answer to the cross interrogatories, the deponent says as follows:

To the first cross interrogatory he says: That he is fifty-two years old; that, from 1806 to 1813, he lived part of the time, about a year, at Pascagoula; the rest of the time in Louisiana.

In answer to the second cross interrogatory he says: That he has not spoken of any marriage ceremony at which he was present, of any banns published, nor of any record of marriage. In such a simple state of society as that then existing at Pascagoula, and in such a sparse population, marriage ceremonies, in the usual acceptation of that term, were very little known; and as to banns, such a thing was probably never heard of. Who could have published banns, and to whom could the publication have been made? As to records, deponent says he is not aware of any that were kept out of Mobile. A Spanish authority from Mobile would sometimes come to the Bay of Pascagoula. Deponent remembers that Dr. Orson once came there. Sometimes a priest would visit the bay, and give religious ceremonies. There was generally a syndic residing at the bay, an officer to do what such a simple population required, but who kept no records. Deponent's father was syndic, and as such used to adjust the little concerns of the few people who were there.

To the 3d cross interrogatory he says: That he has not spoken of the ages of any of the children except George, whose age he is enabled to remember very nigh, from the fact that deponent left the bay in 1807, and that George had been born not long before. As to the relative ages of the other children, or to the time of Joseph's birth, whether it was before or after the death of his father, deponent cannot pretend to speak.

To the 4th cross interrogatory he says. That he knows nothing of the matters therein referred to.

To the 5th cross interrogatory he says: That he knows nothing of the matters therein alluded to.

To the 6th cross interrogatory he says: That he knows nothing of the matters therein alluded to.

To the 7th cross interrogatory he says: That he has no knowledge of any such circumstances as those therein alluded to; that, to the best of

his recollection, Capt. Collins was always held in great regard by deponent's father, and continued to the last, and without interruption, to be a frequent visiter at the house.

To the 8th cross interrogatory he says: That he knows nothing at all of any such matters as those therein referred to.

To the 9th cross interrogatory he says: That as to all the matters herein inquired about he can only return an *ignoramus*.

To the 10th cross interrogatory he says: That he knows nothing about the circumstances therein referred to.

To the 12th interrogatory he says: That he knows nothing as to who the persons are that are interested in this suit, or that are to be benefitted by the same, other than what is indicated in the title of the suit. Some time last year, Mr. Primrose wrote a letter to deponent, stating that he was of counsel in a suit in which the heirs of Joseph E. Collins were concerned, and expressing the desire to be informed whether deponent knew said Collins and family; deponent neither preserved the letter nor a copy of it.

To the 13th cross interrogatory he says: That he is not aware of any thing farther to be stated, except that Elizabeth Wilson was always, as far as deponent was acquainted with her life and conversation, a lady of good moral conduct and respectable character.

E. D. WHITE.

I hereby certify, that the foregoing answers to the interrogatories and cross interrogatories were subscribed and sworn to before me, this tenth day of March, 1845.

Given under my hand and private seal, having no seal of office.

J. A. SCUDDAY, [SEAL.]
Mayor of the city of Thibodaux.

Interrogatories to Origen H. Jewett, Cyrus Sibley, Wm. Fisher, Joseph Krebs, A. Demony, Felix Senac.

Interrogatories to be submitted to Origin S. Sibley, Cyrus Sibley, Wm. Fisher, Joseph Krebs, Augustine Demany, and Felix Senac, witnesses for the plaintiff in a certain suit pending in the court of the United States, held in and for the southern district of Alabama, in which Sidney E. Collins is plaintiff, and William R. Hallett, and Robert L. Walker, executors of the last will and testament of Joshua Kennedy, deceased, and J. H. Hastie and wife, A. R. Meslier and wife, J. G. Aikin and wife, and others, are defendants.

1st. Did you know Joseph E. Collins, a surveyor of the Spanish government, at Mobile, and who resided at Pascagoula about the year 1812, at which place he died? State when your acquaintance commenced, and how long did it continue.

2. Were you acquainted with his wife Elizabeth Wilson; did you ever see them in company; by what name and in what manner did Collins introduce her and address her; how long did they live together as man and wife?

3. Did you know their children, George, Joseph, and Sidney; when

did your acquaintance commence, and how long did it continue; when did George and Sidney leave this State; where did you last see them?

4. How were they employed in this city, and how long did they reside here?

5. Do you know any thing of the lands lying north of St. Louis street, situate on the river, and forming a portion of the Alexander Baudain claim; who claimed that land from 1806 till 1813; do you know of any improvements erected at that time; who erected them; did you ever converse with Wm. E. Kennedy, or Joseph Collins, on the subject of those lands, and of their claims thereto? State those conversations.

6. Did you ever hold any conversation with Joshua Kennedy on the subject of the claims of Joseph E. Collins, or of his heirs? State what passed on the subject of the claims of Joseph E. Collins, or his heirs, to the said lands.

7. If you know any thing material to the matters in issue between these parties, or to the subject in controversy, or to the matters of evidence to which you have been interrogated, answer fully and at large.

CAMPBELL & CHANDLER,
For plaintiff.

Filed Fedruary 11th, 1845. JOHN FITTS, *Clerk.*

Cross interrogatories to the above witnesses.

Cross interrogatories to be submitted to Origin S. Sibley, Cyrus Sibley, Wm. Fisher, Joseph Krebs, Augustine Demany, and Felix Senac, witnesses for the plaintiff in suit pending in the U. S. circuit court at Mobile, wherein Sidney E. Collins is plaintiff, and Hallett and Walker, executors of Joshua Kennedy, deceased, the heirs of Joshua Kennedy, and others, are defendants. The defendants, reserving all legal exceptions to the competency against witness of said Felix Senac.

1. If you speak of Joseph E. Collins and Elizabeth Wilson living together, say if you speak from your own knowledge or from hearsay; do you know whether they lived together as lawful man and wife, or in a state of concubinage; when and where did you see them together in company, and who was present; when and where, on what occasion, and to whom did you ever see him introduce her as his wife, and who was then present; was it not understood among their acquaintances, so far as you learned, that they were *not* married?

2. Did Joseph E. Collins, between the years 1805 and 1811, visit Mobile frequently; did he spend much of his time there between said years; did he make visits of considerable length; did he bring the woman, Elizabeth Wilson, with him to Mobile, *ever* to the best of your knowledge.

3. Can you state any circumstance tending to fix the age of George Collins, or Sidney E. Collins; what was the age of Sidney in the fore part of the year 1809; how long before Jos. E. Collins's death were you at his home; how old, or how large, was Sidney then?

4. If you state any conversations of William E. Kennedy, be par-

ticular to state the whole thereof, and at what time that conversation occurred, and the occasion thereof; who was present at such conversation? If you state any conversations of Joseph E. Collins, please to state if William E. Kennedy was present thereat; did you hear William E. Kennedy deny the right of Collins to said land, or to any part thereof; if so, when was such denial made?

5. If you state any conversation with Joshua Kennedy, as asked in the sixth direct interrogatory, please to say when those conversations were held; what was the occasion that brought them about, and who was present thereat; did you or not hear or know that Joshua or William E. Kenne'y claimed to hold said land by virtue of a grant made to Thomas Price by the Spanish government, and purchased from Price by Kennedy; did the said William E. and Joshua Kennedy claim to hold title to said land for themselves and their assigns, and adversely to the claims of all other persons?

6 Do you know of Joseph E. Collins making any claim to those lands as late as 1812 or 1813?

7. Were those lands, in the years 1829 and 1830, of any fixed or definite value, or was their value uncertain, indeterminate, and variously estimated; was marsh property, in the upper suburbs of the city, then in demand for business or improvements; was it deemed desirable property; have those lands been reclaimed from the marsh since 1830, and by whom; at whose costs and at whose labor; what improvements have been put on them by J. Kennedy, and what did he do to make them valuable or fit for use; what, in 1829 and 1830, was thought of the cost, practicability, or profit, of undertaking to reclaim marsh lands, by raising them above water; had it then been tried, and to what extent; were many willing to engage in it?

8. Have you a recollection of those lands in 1824 and 1825; were there any remarkable or notable change in the condition or value of these lands from the year 1824 to 1825, or did they continue about the same; was their value in the year 1825 nominal; or what was it, little or much?

Additional cross interrogatories.

Additional cross interrogatories for Augustin Demany and Joseph Krebs.

1. Do you know the ground in the upper part of the city of Mobile, in which the heirs of Joseph E. Collins claimed an interest, and which Joshua Kennedy purchased from them, extending east from Royal street to the river; what was the state and condition of this property in 1820; what was the state and condition of this property in 1829 and 1830; how was it situated with regard to the city in the last named years; was it suburb property; how far out of the business part of the city was it; where was the business parts of the city then; how far back from the river was said ground covered by water, or ordinarily subject to be overflowed, and how far by high tides, in the last mentioned years; was said property, in the last mentioned years, considered of

much or little value; was it in demand; what was then thought of the cost of reclaiming such ground from the marsh; how long thereafter, or in what year, did this property grow into estimation; by whose labors was it made to do so; what do you think was the fair cash value of this land in the years 1829 and 1830; was it worth $3,000 or $4,000? Name a sum according to the best of your judgment.

10. Do you know of the purchase made by Kennedy of the claim of the heirs of Joseph E. Collins on this land; did you see the money or any part of it paid, or know it was paid; what was thought of the price paid by Kennedy therefor at the time; was it considered a good price or otherwise; how did you consider it?

11. What was the usual or customary mode of contracting marriages in this country in the Spanish times; what was then deemed to be the legal mode; was there supposed to be any other legal mode; did the people who contracted marriage generally or universally conform to that mode?

12. Were there any priests in the country from the year 1805 to the year 1812; were there any residing in Mobile throughout this period; who were they; was Pascagoula included in the parish or precinct of the church of the Holy Conception, at Mobile, within those years; did the priests, resident or located at Mobile, visit, or were they in the habit of visiting, Pascagoula throughout the time above designated; could the services of a priest, every year during that period, have been obtained to perform the marriage ceremony; was there any difficulty during that period of getting a priest for that purpose, if the parties were of ability to pay the fees?

13. Were you acquainted with the customs of the country, and of the inhabitants of Pascagoula, during the Spanish times, and especially from the year 1805 to the year 1813; were you born or raised there, or did you ever live there; if so, when and for what length of time did you live there; if you know what said customs then were with regard to contracting marriages, please to state what they were; and what did persons then wishing to contract marriage do; and how did they proceed?

14. Would persons of opposite sexes, cohabiting together, and not contracted or married in the manner indicated in your answers to the last preceding cross interrogatory, have been considered then as living together as husband and wife, or as living in a state of concubinage or adultery?

15. Were people in those times particular or solicitous about having their marriages registered and recorded; and was there much value set upon such records?

16. State whether Pascagoula, at the time before spoken of, was thickly or thinly settled; and whether a marriage, contracted in the usual manner, would be likely to be an event of notoriety in the settlement.

17. If you know, or can set forth, any thing material to the matters in issue between these parties, or to the subject in controversy, or to the

matters of evidence, to which you have been interrogated? Answer fully and at large.

STEWART & EASTON,
For Defendants.

Filed, February 21st, 1845.

JOHN FITTS, *Clerk.*

Interrogatories to John Bloodgood, Wm. Jones, and Sidney Smith.

SIDNEY E. COLLINS,
vs.
WM. R. HALLETT, Robert L. Walker, executors of Joshua Kennedy, deceased, J. H. Hastie and wife, and others.

In the circuit court of the United States, for the southern district of Alabama.

Interrogatories to be submitted to John Bloodgood, Wm. Jones, Sidney Smith, witnesses for the plaintiff in the cause above stated.

1. Are you acquainted with the land situated between Royal street, St. Louis street, St. Anthony street, and the river Mobile; how long have you been acquainted with it?

2. What was the value of that land in 1829 and '30; what was the value in 1844?

3. Were there any sales of lands, in the neighborhood of this land, from 1828 to 1832? If yea, please state what sales were made, and at what price, and what was the condition of the property sold.

4. If you know any thing material to this issue, or to the evidence you have given, or to the matters in controversy, state the same fully and at large.

CAMPBELL & CHANDLER,
For plaintiffs.

MOBILE, *March 27th*, 1845.

SIDNEY E. COLLINS
vs.
HALLETT & WALKER, et al.

Circuit court of U. S. southern district of Alabama.

Cross interrogatories.

Cross interrogatories to be submitted to Sidney Smith.

1. What business did you follow or carry on in the years 1829 and '30; what was then the style of your house; how long thereafter did you continue to carry on the same business, and when did you embark in a new or different business?

2d. When did you become the real estate agent of Jonathan Hunt; what were your operations in real estate, in the city of Mobile, before that time; have you conversed much with Mr. Hunt about the value of real estate since?

To Sidney Smith and John Bloodgood.

3. Have you any interest in this suit, or expectation of benefit or advantage, by a recovery of the plaintiff therein; who else, besides Sidney E. Collins, is interested in the prosecution of said suit, or has made any advances, or expended any money, for the carrying of it on, to the best of your knowledge, information, or belief; and by whom were you so informed?

4. Who has at any time proposed to you to take an interest in said suit, and when; what is the amount of each one's interest; who is concerned with the plaintiff, to the best of your information; and by whom were you so informed?

5. State where the plaintiff lived, at the time of the commencement of his suit, to the best of your information; and for what purposes of deception he was alleged in his bill of complaint to be "a citizen of Missouri."

6. State if, in 1829 and '30, and since, the south line of the Orange Grove has been fixed and determined, or has it been a subject of contention, and between whom has that contention existed; what suits have been brought to establish said south line, and what suits are now commenced and pending, on the part of the proprietors of the Orange Grove, and against what owners or holders of property, north of St. Louis and east of Royal street, and for the recovery of what property; where do the proprietors of the Orange Grove contend or claim that their south line should run, or extend to at its extreme southern extension; do they claim that their south line should take in any of the property south of St. Anthony street, east of Commerce street?

7. Is there any contention now existing about the boundary line, dividing the "Orange Grove" from the "Price tract," east of Royal street; are you interested in the Orange Grove property, or member of the Orange Grove company; or are you the agent of any one who is so interested, or is such member, and of whom?

9. Please to name all the persons who now have, and all those who for the last two years have had, any interest in the undivided Orange Grove, or the stock of the Orange Grove Company, to the best of your knowledge and belief.

10. Who has been, for some time past, the principal manager of the concerns of the Orange Grove Company?

11. What do you consider the present value, (or the value in 1844,) of all the real estate in the city of Mobile, included within the lines of the Orange Grove tract, (exclusive of the part lying west of bayou Marmot;) what was the cash value of the same, on or about the 5th of May, 1831, when sold by James Innerarity, pursuant to a decree in chancery?

12. When you speak of the value, in 1829 and '30, of the lands lying between Royal street, St. Louis street, St. Anthony street, and the river Mobile, do you mean their cash value then, or what they might have sold for, on the usual credits given on the sale of lands in Mobile in past years? Please to make the same explanation in regard to your valuation of these lands in the year 1844.

To Sidney Smith, John Bloodgood, and William Jones.

What is about the average of credits, or cash and credit, upon which lands in the city of Mobile were sold from 1830 to 1840?

14. State how from 1830 to 1840 you would estimate the cash price or value of lands in the city of Mobile, compared with what the same would have brought if sold upon the usual terms of credit, from your recollection of operations made in those years?

15. Will you state whether, as a general rule, lands and lots in the city of Mobile have not, for the last fifteen years, been assessed for purposes of city taxation a good deal above what ought or would be considered their cash value, and how much on an average; has not unimproved or waste property been generally assessed higher in proportion to its value than improved and productive property; have not the city assessments been generally made on the basis of a speculative or credit value, than what the property could actually be sold for in cash?

16. Are you not of the opinion that the height to which property rose during the speculative mania in 1835 and '6, and the extent to which many persons were implicated by their purchases then, does yet give something of a false estimation to property in the city of Mobile?

17. Are you not of opinion that these implications, as mentioned in the last cross interrogatory, the impossibility of reselling without loss, and the necessity of improving to save themselves in part, has been a principal cause of the great improvements in the upper part of the city on the water side; has not every house in Mobile, east of Royal street and north of St. Louis street, been built since 1836? If there are any exceptions, please state them.

18. Were you present at the sale of the Orange Grove, &c., made by James Innerarity in the spring of 1831; what were the terms of said sale as to cash and credits; were the credit payments with or without interest; who was the best bidder at said sale, and at what price?

19. State for whom the Orange Grove, &c., was purchased at the sale mentioned in the last preceding cross interrogatory; were they not persons who had been up to that time of the "down town" interest or party; was the object of the company of its members in making said purchase merely a speculation founded on the supposed value of the lands, or was there united with this any ulterior object, of using the acquired ownership of the tract to advance the "down town" interest? Answer from the best of your knowledge or information at the time.

20. Was there any "up town" company also found to purchase the Orange Grove at said sale; who composed this other company; was Joshua Kennedy one of this company; who was appointed to bid for this company at said sale, and what was the limit given him; what was Joshua Kennedy's limit, and what did he think of the purchase made at that sale?

21. Was there any arrangement before said sale between the "up town" company and Joshua Kennedy as to the settlement of bounda-

ries between the Orange Grove and Kennedy's property? If so, state what it was.

22. Do you know of any member of the company, who purchased the Orange Grove, appearing on the same day after the sale a little sick of his purchase, or intimating a willingness to relinquish it; if such a case occurs to your memory, name it; will you state any sale you may know of, of property east of Royal street, and north of St. Louis street, in the years 1829, 1830, or 1831, up to the sale of the Orange Grove by Innerarity on the 5th day of May, 1831, except the releases to George and Sidney Collins, to William Kitchen? If any such sales took place, please to designate the land, its extent, and the prices paid.

23. Was not the purchase of the Orange Grove by the company in the spring of 1831, the circumstance or event that first gave an impulse, and any thing like a decided estimation, to property in the marsh north of St. Louis street?

24. Did not property commence rising, in the upper and water side of the city, almost immediately after the purchase mentioned in the last cross interrogatory; did it not continue to rise thereafter until the spring of 1836; when did it reach its highest point?

25. When was the first public sale made by the Orange Grove Company; what extent of grounds (naming the streets and squares) was then sold, and what was the aggregate price of all the lots then sold?

26. When was the last public sale made by the Orange Grove Company; what amount of ground (naming the streets and squares) was then sold, and what was the aggregate of the sales?

27. Were there any public sales by the Orange Grove Company between the first and the last? If so, when were they; what were the lands sold at each sale, and the aggregate price of the lots sold at each sale?

28. From the first public sale by the Orange Grove Company to the last public sale by the same, how much in general had the property sold at the first sale risen in value or price, judging from any resales of such property at or near the period of the last sale that you may know of, and taking the average of such advances of price?

29. What was the value of one undivided 48th part of the Orange Grove, about the period of the last public sale made by the company; did you know or hear of any sales of 48ths, or other fractional quantities, made about this time by Jonathan Hunt or other person to Benjamin Wriggleworth, Charles G. Pitcher, Benjamin B. Bealle, Pleasant Dearing, Otis Dyer, or other person? If yea, what were the quantities sold, by and to whom, and what were the prices contracted to be paid therefor?

30. State as nearly as you can recollect in or about what year, in the city of Mobile, "water lots" unfilled began to be priced or sold at so much the front foot; can you tell who was the author of this ingenious invention?

31. Please to state what, from 1830 to 1840, was about the average

price per cubic foot charged and paid for filling up water lots in the city of Mobile; can you form any estimate of the money and value of the labor expended by Joshua Kennedy in filling up and reclaiming the property described in the first direct interrogatory; was it not necessarily a very great sum; might not a reasonable estimate range from 50 to 75 thousand dollars?

32. Will you state whether, in 1829 and '30, this property, meaning the property described in the first direct interrogatory, had anything like a known and determinate value; or was its value then prospective and speculative, and liable to be variously estimated?

33. Was the property in 1829 and '30, from its marshy state and its situation in the suburbs in the city, in a condition to be laid off and sold in lots of 50 by 100 feet; would such lots then have been at all in demand; could a single lot of that size in this property (standing alone) have been then filled up and improved, without a great disproportion of cost and expense; would not embankments or palisades have been necessary around such lots, to prevent the material used in filling up from spreading on the other lots around, or washing away; could any improvement then have been made on a lot of that size that was likely to pay?

33. State what you suppose may have been the expense, since 1830, of making and maintaining the wharves in front of this property, judging from other wharves similarly situated; what is the average cost per year of a keeping a wharf of the size of one of these in repair; what was about the cost of making one of the long wharves, as used in past years, when they commenced at Water street, and extended out to the river; what of making one of the present length; how long will a wharf last upon an average?

34. In 1829 and '30, how far up north had Water street been made; was the Union Press then built; did Jones' wharf in front of the Union Press then cover that part of Water street now in front of the Union Press; what was the width and length of said wharf?

35. What improvements were then there, on the west side of Water street, south of the Union Press, down to St. Michael street; when was Gordon's hydraulic press, &c., built; when was the ground filled up on the north side of St. Michael, east of Water; and how far north from St. Michael; was this property filled up by Sewell, and when; when was the wharf built in front of this property last named, and who built it; was there a dock between this strip and Jones's wharf, extending to or near Water street; when was the space covered by this dock filled up, and by whom?

36. In 1829 and '30, where stood the house farthest up on the east side of Water street, and what kind of a house was it; was Commerce street at that time in existence; had any part of it been made, or was it then contemplated to make any such street; if any part of said street was then made, what was it; where was the cotton received at Mobile then landed, and where was it stored; what was the range of the steamboat landing principally; between what streets, north and south, was

the business of the city then chiefly transacted; where then stood the most northerly dry goods store in the city; how many bales of cotton were received at Mobile in the winter of 1829–'30, and what was the population of the city in 1830; what are about the annual receipts of cotton now, and what its present population?

37. Has not the progress of the city of Mobile up stream, since 1829 and '30, been such as to greatly exceed the expectations entertained by nearly every body here in 1829 and '30, to the best of your belief? Do you think it was anticipated then by many persons here that 450,000 or 500,000 bales of cotton would be received in the city in one season within 15 years thereafter, or that its population would reach 18 or 20 thousand in that period?

38. Were not the prospects in 1829 and '30, as then generally rated, such as to class it rather as a large commercial village, than an important commercial emporium and seaport?

39. State if in 1829 and '30 the Union press was not inconveniently situated for business from its distance "out of town," or its remoteness from the ordinary business range; and were not the efforts of the owners of said press, and their very extensive acquaintance with the country planters and merchants, among the main causes of getting any cotton landed or stored there?

40. Will you state what number of steam cotton presses, and brick warehouses, have since that time (1830) been built north of St. Anthony street? Have they not all, without exception, been built since the year 1836; which have not; what number of bales of cotton can they accommodate with storage at once; and about what proportion of the whole crop was stored and compressed north of St. Anthony street in the season of 1843–'4?

41. Do you know of the mayor and aldermen of the city of Mobile having made claim, previous to 1830, to the property described in the first direct interrogatory from high water mark to the channel of the river, under any act of Congress granting the front property of the city to said mayor and aldermen; what was thought of their claim; did they sue Joshua Kennedy or his executors for the recovery of this property; where was said suit finally decided; and what was the probable cost and expense of defending said suit?

42. Do you know of any persons compromising with the mayor and aldermen of Mobile for their claim to the front property in the city under the act of Congress passed about the year 1824; if so, who made such compromises, and for what sums of money, and what was the extent of the property, the subject of these compromises?

To William Jones.

43. What is the present value of all that part of the city of Mobile embraced within the bounds of the Orange Grove tract?

44. What is the present value of all that part of the city of Mobile lying between Royal street, Bloodgood street, the channel of the Mobile river, and the south line of the Orange Grove tract?

To Jones, Bloodgood, and Smith.

45. If you know any thing farther material to this issue, or to the evidence you have given, or to the matters in controversy, state the same fully and at large. STEWART & EASTON.

For the defendants.

UNITED STATES OF AMERICA:

The State of Alabama, Mobile county:

Interrogatories to be submitted to Mary Rain, wife of Cornelius Rain, a witness for the plaintiff, in a cause pending in the circuit court of the United States for the southern district of Alabama, in which Sidney E. Collins is plaintiff, and Wm. R. Hallett and Robert L. Walker, executors of the last will and testament of Joshua Kennedy, deceased, and others, are defendants.

1. Were you acquainted with Joseph Collins, the brother of Sidney E. Collins, the plaintiff in this suit, in his lifetime, and where did he die?

2. Were you acquainted with George Collins, the brother of the plaintiff; what is the reputation on the subject of his death; when and where is it understood that he died?

3. If you know anything material to this issue, or to the matters in dispute between the parties, state the same fully.

CAMPBELL & CHANDLER,
For Plaintiff.

Filed March 14th, 1845. JOHN FITTS, *Clerk.*

Cross interrogatories for Mrs. Mary Rain.

1. When did you first hear that George Collins was dead, and who informed you thereof; did you hear the same from any other person or persons; if so, who were those persons, and when did they so inform you?

2. How long before Joseph Collins's death was he adopted or received into his family by your father; how old was Joseph when so adopted or received?

3. How old was Joseph at the death of his father?

4. If you know any thing material to the issue between the parties, declare the same fully and at large.

STEWART & EASTON,
For Defendants.

Cross interrogatories filed March 24th, 1845.

JOHN FITTS, *Clerk.*

Interrogatories to Charles Delaye.

SIDNEY E. COLLINS
vs.
WILLIAM R. HALLETT AND ROBERT L. WALKER, executors of the last will and testament of JOSHUA KENNEDY, deceased, J. H. HASTIE and WIFE, J. G. AIKIN, et al.

Circuit court of the United States, southern district of Alabama.

Interrogatories to be submitted to Charles Delaye, a witness for the plaintiff in the foregoing cause.

1. Are you well acquainted with the locations of the lots and streets in the city of Mobile; have you made frequent surveys in the city; have you been city engineer, and prepared a map of it?

2. Attach to your answers a map of the claim of Joseph Collins to the lot on the river and south of the Orange Grove tract, which is found in the Spanish archives. Attach also a map showing the squares south to St. Francis street, and west to Conception street.

4. Mark the lines of the Price tract on the same. If you know of any fact material to this issue, or to your evidence in this cause, state the same fully and at large.

CAMPBELL & CHANDLER,
For Plaintiff.

Filed March 14th, 1845.

[JOHN FITTS, *Clerk.*]

Cross interrogatories.

Cross interrogatories for Mr. Charles Delaye.

1. Have you made a survey or surveys of the Orange Grove tract, of the Thomas Price tract, and of the property included in the grant to Alexander Baudain; if yea, annex to your answer a map of the Orange Grove tract, of the Alexander Baudain grant, and of so much of the squares of the city of Mobile as lie east of Joachim street and north of St. Francis street, up to Bloodgood street?

2. Mark on said map the line of the Price grant from St. Francis street to where Joachim street intersects the south line of the Orange Grove tract. Mark on said map, also, the line of high water mark of the river Mobile in 1824, from St. Lewis street to the Orange Grove; also the high water mark in the year 1830; also mark thereon the low water mark in 1830 from St. Louis street to the Orange Grove.

3. Mark on said map the south line of the Orange Grove, as fixed by the jury in the case of Doe on the demise of the proprietors of the Orange Grove against Joshua Kennedy's executors, in the circuit court of Mobile county, by producing said line to within 50 feet of Water street, and thence running it eastwardly parallel with street to the water, and draw a line dividing the space between the south line thus ascertained and St. Louis street, and Royal street and the channel, into north and south halves, so as to give each half a front on Royal street and a front on the water, equal to that of the other half.

4. Produce the southern line of the Orange Grove to Front street, and draw a line dividing the space between it and St. Louis street, equally, as in the foregoing (3d) cross interrogatory.

5. Lay off on said map a lot on the north side of St. Anthony street 100 feet wide, commencing 100 feet west on Water street, and running thence with the same breadth along the north side of St. Anthony street east, to the channel of the river; also a lot, 100 feet by 100 feet, on the northeast corner of Water and St. Louis street.

6. Have you, as city engineer or otherwise, ever made a survey of the marsh, east of Royal street, and north of St. Louis street, to ascertain its depth. What in 1830 was the relative depth of said marsh east of Royal street, from St. Louis street to the south line of the Orange Grove, and from the south line of the Orange Grove to Bloodgood street, both taken to Front street; in which was the said marsh the deepest, in the Baudain tract or in the Orange Grove tract?

7. In 1829 and 1830, was the property filled up in the square, or the south side of St. Louis street?

8. What is the superficial extent of the south half of the Baudain tract, calculating from Royal street to Front street; how much larger than the south half of the Baudain tract is that portion of the Orange Grove lying east of Royal street, and included between the Baudain tract and Bloodgood street, computing, also, to Front street; how near does the Orange Grove line approach the south half of the Baudain tract on the water front?

9. In 1830 what was the depth, under the level of St. Louis street, of that part of the south half of the Baudain tract where Water street now runs; what was its depth where Commerce street now runs; also, where Front street now runs; what average depth, from Royal street to Front street, of filling up did this property then require, to bring to the present level of St. Louis street; how many cubic feet of filling did the whole property then require for this purpose.

10. Did Joshua Kennedy have this property filled; make an estimate of the cost of filling it up, at the average price for filling up water lots paid in past years; what prices did you know of Joshua Kennedy's paying for the filling up of this property, and to whom?

11. Please to state, from what you know of the process of filling up water property, whether a single lot of, say, 50 by 100 feet, in the then condition of the marsh could have been filled up alone, without a very great disproportion of costs, compared with the filling up of a square; would not the material used for filling have spread over the contiguous lots, or have been washed away, unless confined by barricades or embankments; could less than a square, confined by streets on all sides, have been filled up with any advantage, or without a great disproportion of cost; would not the filling up of a single lot of 50 by 100 feet, under the circumstances, have cost as much or more than the lot was worth after so filled?

12. What expedient did Kennedy resort to to make a commencement of filling this property, and to prevent the dirt and sand from washing away?

13. If you know, or can set forth, anything material to the matters in contest in this case, or to the matters of evidence as to which you have been interrogated, answer fully and at large.

STEWART & EASTON, *For Defendants.*

Cross interrogatories filed March 24th, 1845.

JOHN FITTS, *Clerk.*

SIDNEY E. COLLINS
vs.
WM. R. HALLETT, Robert L. Walker, executors of the last will and [testament] of Joshua Kennedy, deceased, J. H. Hastie and wife, John G. Aiken and wife, A. R. Meslier and wife, Joseph Kennedy, Augusta Kennedy, James Innerarity, William Kitchen, Samuel Kitchen, James Campbell, Branch of the Bank of the State of Alabama, at Mobile, are defendants.

Ciacuit court of the United States, southern district of [Alabama.]

1. Have you had, at any time, any conversation or conversations with Joshua Kennedy in regard to a conveyance made by William E. Kennedy, in his lifetime, to Samuel Kitchen, bearing date the 28th day of January, 1820, for the south half of the tract of land lying in the upper part of the city of Mobile, and known as the Alexander Baudain tract, which was conveyed to Wm. E. Kennedy by Baudain; will you state each conversation he may have had with you on that subject; when did he converse with you, and what did he say as to the objects for which that deed was made to the said Samuel Kitchen? Answer fully and at large all he has ever said on the subject.

2. Did the said Joshua Kennedy state to you that the said Kitchen had at no time any intererest in the said property, and that his name was merely employed to serve the purpose of defeating the claim of James Innerarity?

3. Will you state if you brought to the notice of Joshua Kennedy any reports or conversations you may have heard respecting his connection with that deed or his interest in said land, and what did he say in regard to the same? State fully and particularly everything that ever passed between you and Joshua Kennedy on the subject.

4. If you know anything material to the subject of this suit, or to the matters in dispute between the parties, or to your evidence, state the same fully and at large.

CAMPBELL & CHANDLER,
For Plaintiff.

The foregoing interrogatories will be addressed to Joseph S. Kennedy and Jesse Carter, witnesses on the part of the plaintiff in the foregoing cause, pending in the circuit court of the United States for the southern district of Alabama.

CAMPBELL & CHANDLER,
For the Plaintiff.

Filed March 3d, 1845.

JOHN FITTS, *Clerk.*

SIDNEY E. COLLINS
vs.
HALLETT & WALKER, executors, and others.

In the circuit court of the United States for the southern district of Alabama.

Objection.

The defendants in the above stated case object to the examination of Joseph S. Kennedy and Jesse Carter, as incompetent to testify in the above cause, for grounds and reasons which will be shown and established. They object to the first, second, third, and fourth interrogatories filed, because they are illegal and irrelevant; they further object to the said interrogatories, severally, because they are leading questions calculated and designated to inform the witnesses of the answers desired to be given by them.

Thus excepting and objecting, if the said witnesses, or either of them, shall answer any or all of said interrogatories, then the defendants, reserving said objections, propound to the said witnesses the following cross interrogatories:

Cross interrogatories.

1. Do you know or believe that any other person besides Sidney E. Collins has an interest in the prosecution of this suit, or expects any advantage or benefit from the recovery of the plaintiff therein; if yea, state the name of every such person, the amount of his interest, and the nature of his expectations; what has been told you on this subject, and by whom were you so told or informed; have you at any time been solicited to take an interest in said suit, and by whom; and what did you do or reply on such solicitation or proposal?

2. Did you on any occasion heretofore, in any affidavit, answer, or deposition made by you, speak of the same conversation with Joshua Kennedy, now alluded to by you in your answer; if so, what was that occasion, and did you then have any interest in the controversy which gave occasion to your making said statement or answer; had you conversed with any person having the same or similar interest with yourself in said controversy, before making said answer, touching the matter set forth in said answer; with whom had you so conversed?

3. Have you at this time *any recollection at all* of the facts set out in your answer to the cross bill in the case of the heirs of Wm. E. Kennedy against the executors and heirs of Joshua Kennedy, or do you merely remember having made such an answer; in making said answer, did you undertake to state the facts yourself, or as of your own knowledge, or did you speak on the information or prompting of others, which you fully believed to be true?

4. Please to state whether, at the time of making said answer, you were able, of your own knowledge or memory alone, to speak of any deeds therein referred to, of the persons to whom they were made, or the dates of said deed or deeds; did you, in said answer, speak of the

date of any deed from your own knowledge, or were you satisfied of the correctness of your statement, in regard to said date, from information or some other manner?

3. Please to state whether recently, or since the bringing of this suit, you have read over, or otherwise informed yourself, or been informed, of the matters stated in the answer before referred to. If so, say whether, without the aid of said answer, and upon your memory alone, unassisted thereby, you would now be able to state the particulars, at present deposed to by you, in relation to the said conversation of Joshua Kennedy. In what particulars has said answer aided your memory?

6. If you had any conversation with Joshua Kennedy, or heard any statement made by him respecting the claim of Samuel Kitchen, give the exact words of Joshua Kennedy as nearly as you can recall them. When did this conversation or statement take place, and who, besides yourself, was present thereat; did not Joshua Kennedy on that occasion, on being informed of Kitchen's claim, get into a very great passion, and speak of chastising Kitchen?

7. Did you converse with Joshua Kennedy, or hear him speak of Samuel Kitchen's claim, more than once, or once only; if more than once, how often, and when; what did he say at each conversation, and who was present at each conversation?

8. Did you converse with Joshua Kennedy, or hear him speak of the deed of Wm. E. Kennedy to Samuel Kitchen, more than once, or once only; if more than once, how often, and when; what did he say at each conversation or statement, and who was present at each?

9. Did Joshua Kennedy, in any of the conversations to which you allude, speak of any deed from Wm. E. Kennedy to Samuel Kitchen; if so, did he speak of the date of said deed; did he speak of more than one such deed; if so, did he make any reference to their dates?

10. Did Joshua Kennedy, in the conversation you allude to, in which he spoke of the claim of Samuel Kitchen, speak also of the claim of James Innerarity to the same land; did he, on that occasion, mention any deed to James Innerarity; if so, did he mention the date of said deed, or by whom it was made; if so, what was that date, and who was the maker of the deed to Innerarity then mentioned?

11. Is your recollection of the dates of written instruments good or very good, or bad or very bad?

12. Did you hear Samuel Kitchen make the claim to the land which was reputed [to belong] to Joshua Kennedy, or was [it] stated to you by some one else *the* he claimed it; if by some one else, who was that person, and when was the statement made, and who was present?

13. Had you heard, before that time, that Samuel Kitchen made claim to the land; if so, how long before did you first hear it, and from whom; did you hear the same report frequently, or more than once before, from any of the Kitchen family, or from himself or others; and did you thereupon, or ever before the conversation alluded to, inform Joshua Kennedy of said claim or report?

14. Did Samuel Kitchen in making said claim, or the person who

spoke to you thereof, or whose report or statement you conveyed to Joshua Kennedy, specify the extent of the land claimed by him, or the boundary of said land?

15. Did Joshua Kennedy, in alluding to Samuel Kitchen's claim, mention or specify the extent of the land or its boundaries?

16. Did Joshua Kennedy always contend that the deed, from Wm. E. Kennedy to James Innerarity, alluded to, was an imposition upon him, the said Wm. E. Kennedy; how often have you heard Joshua Kennedy speak in relation to said deed, or to Innerarity's claim?

17. Did the conversation you refer to of Joshua Kennedy, respecting the claim of Samuel Kitchen, take place before or after said Kennedy's return from Washington, in 1837; how long before or after; did you see him pass through Stockton on his return home on that occasion?

18. Did Joshua Kennedy, in his said conversations referred to, speak of the deed to Innerarity as being made when he, Wm. E. Kennedy, was drunk; is it a deed alleged by Joshua to have been made by William when he was drunk that your deposition refers to, or is it some other deed?

20. Did Joshua Kennedy speak in said conversation of any deed from Wm. E. Kennedy to James Innerarity; if so, did he not then say it was a deed, he, Joshua, did not know of at time of its execution?

21. State if you know any thing of a misunderstanding between William E. Kennedy and Joshua Kennedy, arising from the said William E. Kennedy having sold to Joshua certain lands which he had previously sold to J. Innerarity; state what you know of any such transactions, when they took place, and what lands were so sold; did Wm. E. Kennedy allege that he was drunk when he made said deed to Innerarity, and did he not deny his knowledge of having made it; can you call to mind any altercation between Wm. E. and Joshua Kennedy arising out of this transaction, and when did it take place, and what was said on both sides; can you be certain that the conversation with Joshua Kennedy, alluded to, did not refer to this transaction?

22. Do you not know of conveyance made by Joshua Kennedy to Samuel Kitchen for a grant which he (Joshua) held in the city of Mobile, which was supposed to cover the same lands deeded by Wm. E. Kennedy to Innerarity, as mentioned in the preceding 21st cross interrogatory, said grant being of an older date than that under which Wm. E. Kennedy held; if so, specify the same?

23. Do you not deem it probable, from what you know of matters and transactions in which Joshua and Wm. E. Kennedy were concerned, that the claim of Innerarity, which there was a contrivance to defeat, was the claim spoken of in the two last cross interrogatories?

24. If you say that Joshua Kennedy spoke of the deed of Wm. E. Kennedy to Samuel Kitchen as a contrivance to save the property or defeat Innerarity, did he specify in what the contrivance consisted; did he say the deed was withheld from being recorded until after the deed was made to Innerarity; how long did he say the deed was kept off the record; did Wm. E. Kennedy ever acknowledge the deed?

25. If Joshua Kennedy spoke of any contrivance to save the property with which Samuel Kitchen was connected, did he specify any particulars more than are stated by you in your answer to the cross bill in the case of the heirs of Wm. E. Kennedy against the executors and heirs of Joshua Kennedy, in the chancery court of Mobile; did you remember those particulars then; if so, why did you not then state them; if you did not remember them then, how have you been able to remember them since?

26. For whose use did you understand this contrivance was resorted to save the property; did you understand Joshua Kennedy, at the time of these conversations, as holding the *the* title for the benefit of the heirs of Wm. E. Kennedy?

27. Did you, as the heir of Wm. E. Kennedy, or as representing the interest of any of his heirs (if so, which heir, and in what capacity did you represent it) by yourself, or counsel, or agent, agree to a compromise of all the matters of dispute involved in a certain suit brought by the heirs of Wm. E. Kennedy against the executors and heirs of Joshua Kennedy, in the chancery court of Mobile, to set aside a certain deed from William E. to Joshua Kennedy, made about the month of December, 1824, and for other purposes; was said compromise made upon the basis of a fair, and equitable, and equal division of the lands embraced in the several deeds or documents by which that compromise is evidenced; do you and the other heirs of Wm. E. Kennedy hold the lands thus allotted to you under the titles of Joshua Kennedy and the compromise deeds; or as the heirs of Wm. E. Kennedy; who are the heirs of Wm. E. Kennedy who waived by said compromise equivalents in value for the lands therein ceded by them to the executors and heirs of Joshua Kennedy?

28. State when, at the time of the compromise spoken of in the preceding cross interrogatory, and the deed of the executors of Joshua Kennedy, yielding you a portion of the lands between State street and St. Anthony street the south line of the Orange Grove was supposed to run; where is it now claimed by the Orange Grove Company or owners to run; what lands now held or claimed by you do the Orange Grove Company make claim to, and what suits have they pending or in progress for the recovery of the same?

29. Did you, at any time, communicate to the executors or heirs of Joshua Kennedy anything you might know to the prejudice of the titles of the land lying between St. Anthony and St. Louis streets? If yea, when and how did you communicate it, and what did you communicate to them, or either of them?

30. Do you not know that the deed from Wm. E. Kennedy to James Innerarity, spoken of by Joshua Kennedy in the conversation to which you have referred, was a deed which said Wm. E. Kennedy never, at any time in his life, acknowledged to have been made by him, but always denied having made it? Did not Joshua Kennedy, in said conversation, so particularize said deed?

31. If you know anything further material to the matters in dispute,

or in issue between the parties, or to the merits of the controversy between them, or to the matters of evidence, about which you have been interrogated, set forth the same, fully and at large, in your answer.

DARGAN & LOCKWOOD,
For defendants.

The plaintiff objects to the 1st int., and to the answer, as improper, irrelevant, &c.

J. A. C., *for pl'ff.*

Filed March 18th, 1845.

JOHN FITTS, *Clerk.*

Interrogatories to Jaques Chickazola, Jacob Baptiste, John Fowler, A. Batre.

Interrogatories to be exhibited to Jaques Chickazola, Jacob Baptiste, John Fowler, Adolph Batre, witnesses for the plaintiff in a cause pending in the circuit court of the United States for the southern district of Alabama, in which Sidney E. Collins is plaintiff, and Wm. R. Hallett and Robert L. Walker, executors of the last will and testament of Joshua Kennedy, deceased, A. R. Mesher and wife, J. H. Hastie and wife, J. G. Aikin and wife, Augusta Kennedy, Joshua Kennedy, and others, are defendants:

1. Did you ever purchase from Joshua Kennedy any portion of the land between St. Louis and State streets, and between Royal street and the river, being on the southern half of what was known as the Alexander Boudain claim to land in Mobile, or do you know of any sale by him, of any portion of the said land, between 1820 and 1824? State the price that you may have given, the time when the sale by Kennedy was made, and the quantity of land sold, and the name of the purchaser.

2. Will you state any conversation that Joshua Kennedy may have had with you respecting the said parcel of land, the time when you had the conversation, and all that he said to you respecting the said lands.

3. Were you acquainted with Sidney E. Collins, the plaintiff in this suit; when did he reside in Mobile, and what business did he follow; how long has it been since his removal, and to what place did he go?

4. If you know anything material to the matters in controversy in this cause, or to the evidence you have given in the same, or anything in favor of the parties to the same, answer fully and at large.

CAMPBELL & CHANDLER,
For plaintiff.

Filed February 8th, 1845.

JOHN FITTS, *Clerk.*

Cross interrogatories to be exhibited to Jaques Chickysola, Jacob Baptiste, John Fowler, and Adolph Batre, witnesses for the plaintiff in a cause pending in the U. S. circuit court at Mobile, in which Sidney E. Collins is plaintiff, and Hallett and Walker, executors of Joshua Kennedy, and the heirs of Joshua Kennedy and others, are defendants:

1. Do you know where the northern line of the Baudain tract runs; is it near or the same as the southern line of the Orange Grove; describe the courses and locations of both these lines; where do they cross Water street and where Commerce street.

2. If you purchased any land from Joshua Kennedy, or knew any to be purchased, produce the deed made on the occasion of such purchase; is said land on the north or south side of St. Anthony street?

3. State if, at the time of the said purchase, you were informed by the seller that said land lay in the south half of the Baudain tract; can you now say it lies in the south half; if so, how do you know it; when and by what means did you come to know it; do you or not know, or have heard, that the Orange Grove Company now claim the same lands, or a portion of them, as falling within the limits of the Orange Grove; who holds now the lands of which you speak?

4. If you state any conversations with Joshua Kennedy, repeat the whole of them, and the occasion which brought them about; were they about the lands so purchased, and before alluded to?

5. If you say that Sidney E. Collins at any time left the State of Alabama, state how you know he went out of the State; is it of your own knowledge or by hearsay; did you accompany him?

6. State if at any time there was a railing or posts put up by Samuel Kitchen, or other person, to mark his northern boundary line of the lands north of St. Louis street; if so, where did it stand; was it north or south of St. Anthony street, or on St. Anthony street; was that understood to be the division between the north and south half of the tract?

7. Was Joshua Kennedy diligent in the pursuit of land claims; was he in general well acquainted with the law relating to land titles in the city of Mobile; was he vigilant as to what effected said titles?

8. Were you aware of a law of Congress granting to the corporation of Mobile certain property in the front of said city, between high water mark and the channel of the river; if yea, when and how long ago did you hear of, or know of said law; was it spoken of by the citizens; did it have a tendency to depreciate or disparage the other titles to front property upon the water in the city of Mobile?

9. In 1829 and 1830, was there any street in the city of Mobile known as "Northern Boundary street;" if not, could any one then certainly know what was meant by the "North Boundary street;" what opinions were entertained by the citizens of Mobile as to the meaning of this term after the passage of the act in 1824?

10. Do you know of the mayor and aldermen of the city of Mobile, having claimed the property north of St. Louis street, and from west

of Water street to the channel of the river; if so, on what was their claim founded; did they bring suit to recover this land against Kennedy, or his executors, or any one else, and when?

Additional cross interrogatory to Jacob Baptiste.

11. Are you acquainted with the southern half of a parcel of land, extending from Royal street to the river Mobile, and lying between St. Louis street and the Orange Grove line; what was the condition of this land in 1820, in 1825, and in 1829, or '30; what was the value of this land in cash (meaning the south half) in the years 1829 and 1830, according to your best judgment?

12. State if Joshua Kennedy, in the years 1829 and 1830, owned or claimed lands in the lower part of the city of Mobile; did he own or claim much, and how much; had he as much interest then to make the city grow downwards as upwards?

13. State, if you knew or heard at the time of the purchase made by Kennedy, of a claim to the land from the Collinss; was Kennedy then thought to have given a high price for it; was he thought to have given as much as the land was worth, or more?

14. Was Joshua Kennedy's customary mode of dealing liberal, or was it the reverse?

15. If you know any thing material to the matters in controversy in this cause, or to the evidence you have given in the same, or anything in favor of either of the parties to the same, answer fully and at large.

STEWART AND EASTON,
For Defendants.

Filed February 28th, 1845.

JOHN FITTS, *Clerk.*

To John K. Collins, H. Kinney, E. Huntingdon, Daniel Walker, Jacob Walker, John Ticknor, George Huggins, Joseph B. Earle, J. S. Glidden, Daniel Robertson, Joseph Cain.

Interrogatories to be exhibited to John K. Collins, Henderson Kinney, Elisha Huntingdon, Daniel Walker, Jacob B. Walker, John Ticknor, George Huggins, Joseph B. Earle, John S. Glidden, Daniel Robertson, Joseph Cain, witnesses for the plaintiff in a suit in chancery, in which Sidney E. Collins is plaintiff, and Wm. R. Hallett and Robert L. Walker, executors of the last will and testament of Joshua Kennedy, deceased, A. R. Meslier and wife, J. H. Hastie and wife, J. G. Aikin and wife, and others, are defendants.

1. Do you know the value of the south half of the Baudain tract of land situate in the city of Mobile, and bounded east by the river Mobile, west by Royal street, south by St. Louis street, and extending half way to the Orange Grove line, by which the Baudain tract is bounded on the north, in the years 1829 and 1830; will you state what the values were at that time, and what improvement had been made upon the land?

2. Will you state whether you had, at any time, any conversations with Joshua Kennedy on the subject of these lots; when and where did

you converse with him; what did he say of his interest in the said lands; how did he claim them, and what value did he affix to them?

3. Will you state, if you know, of improvements and sales of property in the vicinity in 1829 and 1830; had the city improved to St. Louis street; was it clear that the city was improving and would extend upwards; did not the improvement of property in the upper part of the city greatly increase after the fire in 1827?

4. Who exercised the control and who enjoyed the occupancy of this property since your acquaintance with it; was there any wharf upon this property or opposite it; what was the yearly value of this?

5. Was there any house or other erection upon this land; who inhabited it; where was this situated? Answer these questions with reference to the years 1829 and '30, and previous to that time.

7. If you know any thing of the plaintiff in this case, please state where you became acquainted with him; how long did he reside here; how long since he removed from this State?

If you know any thing material to the *to the* plaintiff in this cause, or to the evidence you have given, or to any fact material to the issue between the parties, or the matters in controversy, state the same fully and at large.

CAMPBELL & CHANDLER,
For Plaintiff.

Filed April 5th, 1845.

JOHN FITTS, *Clerk.*

Cross interrogatories.

Cross interrogatories to be submitted to John K. Collins, Henderson Kinney, Elisha Huntington, Daniel Walker, Jacob B. Walker, John Ticknor, George Huggins, Joseph B. Earle, John S. Gliddon, Daniel Robertson, and Joseph Cain, witnesses for the plaintiff, in a cause pending in the United States circuit court, for the southern district of Alabama, in chancery, in which Sidney E. Collins is plaintiff, and William R. Hallett and Robert L. Walker, executors of Joshua Kennedy, deceased, and others, are defendants.

1. Have you any interest in this cause on the side of the plaintiff, or do you expect any advantage from his success therein? State what other persons have such interest or expectation, or have made advances, or have expended money to aid in carrying it on, to the best of your knowledge, information, or belief; and by whom have you been so informed, and what are the grounds of your belief?

2. If you state any conversation or conversations with Joshua Kennedy, as asked in the second direct interrogatory, give the whole of that conversation in the exact words of all the parties conversing; when and where did any such conversation take place, who were present thereat, what gave occasion to said conversation and caused it, and what followed thereafter?

3. Where did you reside in the years 1829 and 1830; when did you first come to reside in Mobile; in what part of the city of Mobile did you

own property in the years 1829 and 1830; when did you first purchase real property in said city?

4. Where have you resided since 1830, and in what occupations have you been employed since that time?

5. In 1829 and 1830, was money very scarce or plenty in Mobile; what in proportion would property then have brought sold for cash, compared with the sale of the same for one-fourth cash, one-fourth in one year, one-fourth in two years, and one-fourth in three years, without interest, according to the best of your judgment?

6. Was there much advance in the price or value of property up town in Mobile from 1829 to 1831? If so, about what per cent.

7. Do you recollect your attention being, in the years 1829 and '30, directed to the then value of the south half of the Baudain tract; if so, by what circumstance was it so directed; do you remember having formed, in either of those years, an estimate of the value of said land; how long is it since you first attempted to form a distinct or definite idea of the value of the south half of the Baudain tract, in the years 1829 and '30?

8. Were you, in the year 1829 or 1830 or 1831, an assessor of taxes for the city of Mobile?

9. Is your estimate of the south half of the Baudain tract founded upon any sales of property in the city; if so, what were those sales; when, by whom, and to whom made, and what were the payments in cash, or on credit, and whether with or without interest; by what means have you become apprised of said sales; did you know of them, and of all the particulars at the time, or have you learned of them since; if the latter, when, and by what means?

10. What part of the city of Mobile was consumed in the great fire of 1827? Describe the burnt district.

11. After said fire, how long was it before the whole of the burnt district was rebuilt?

12. In rebuilding the burnt district, after the great fire of 1827, where were the first buildings erected; what course or direction did the improvements tend from that point?

13. What other improvements or buildings were erected in Mobile, east of Royal street, after the great fire of 1827, before the burnt district was built up? Specify them.

14. Was not the business of the city on the water side, immediately after the fire of 1827, forced or crowded up above Dauphin street, in consequence of the fire; and did it not return back again in the direction of Conti street, as the houses in the burnt region were rebuilt; can you or not recall any instance or instances of persons engaged in business on the water side taking stores considerably above the burnt region, immediately or shortly after the fire of 1827, and afterwards changing their locations further south as the damage of the fire was repaired?

15. Was there not a greater demand for buildings for business purposes in the neighborhood of St. Michael street, east of Royal street,

immediately after the great fire of 1827, than there was in the year 1829?

16. In the years 1829 and '30, what was the proportionate value of that part of the south half of the Baudain tract, commencing midway between Royal and Water streets, for its western boundary, and extending thence east to the channel of the river; what part or proportion of the value of the entire south half of the Baudain tract was the value of the part thus described?

17. In 1829 and '30, had the lands above and adjoining St. Louis street, east of Royal street, any thing of a fixed and ascertained value, or was the value speculative and prospective, and liable to be variously estimated, according to contingencies; had they then any value as lands, independent of the improvement which had been put upon them by Kennedy or Kitchen; without these improvements, what would they have rented for per annum; without these improvements, on what terms could they have been leased for a term of ten years; could they have been leased for a term of twenty years on condition of the lessees filling them up and building on them?

18. In 1829 and '30, what was the proportionate value of that part of the Orange Grove tract lying east of Royal street, extended northwardly through said tract, compared with the value of that portion of said tract extending from the line of Royal street west to Bayou Marmot, (the creek where the Gas works are situated.)

19. From 1828 to 1831, in what part of the city of Mobile had lands or lots more of a known, fixed, or ascertained value, than in any other part?

20. Who, from 1828 to 1832, were the principal owners of property in the squares between St. Louis and St. Michael streets, Royal street, and the Mobile river; was William Jones, was Joseph E. Sheffield, was A. W. Gordon, such owners; were the persons named about that time engaged in improving said property; did they, or either of them, set a high value upon up town property, or was their valuation of it then considered high?

21. Was James Innerarity in 1830, and previously, largely interested in real property in the upper part of the city, and was he not notorious for setting a high valuation upon it; did you consider his valuation high at that time; will you state what, in the years 1829 and '30, was the value of a lot of ground without improvements on it, 50 feet wide, situated half way between Royal street and Water street, fronting north on Dauphin street, and extending southwardly parallel with Royal street to Conti street, with the same width, having a front both on Dauphin and Conti streets; what at the same time was the value of the east half of that block or square in the city of Mobile, (without improvements,) bounded east by Royal street and south by St. Louis street.

22. State what, in the years 1829 and '30, was the value of that strip of land, lying between St. Louis and St. Anthony streets, running from Royal street east to the Mobile river; compared with the value of the whole of the Orange Grove which lies east of the line of Royal street;

what part of the value of the latter was the value of the former? (In propounding this interrogatory, the commissioner will please exhibit to the witness the map of the Orange Grove, furnished by Mr. Delaye, and in the commissioner's possession)

23. State, if you know, what James Innerarity thought of the sale of the Orange Grove in the spring of 1831 for $40,000; how did he behave; did he express joy or disappointment at the conclusion of the sale, if you then saw or heard him?

24. Did not the sale of the Orange Grove in 1831 give a very marked impulse to the up town property; did it not commence rising in price immediately thereafter, and rise with great rapidity, and to a very great height; how long did it continue to rise, and when did it reach its highest point?

25. What was the cash value of the tract, known as the Orange Grove, in the years 1829 and 1830?

26. Was the rise in property, north of St. Louis and east of Royal street, after the sale of the Orange Grove in 1831, founded on a demand for said property for improvement, or was it speculative; did not the improvements of that quarter commence after said property had reached its highest point, and begun to fall; when did the improvements of that region begin, and where have they been principally made; specify the houses in this region that were erected before 1837.

27. When was the first house erected on the north side of St. Michael street, east of Royal street; how long, thereafter was it before the erection of Campbell & Cleveland's house, corner of Water and St. Louis [streets]; state whether the house last named is the most southerly house north of St. Louis and east of Royal street; and how many squares the city had extended downwards in the interval, between the city's crossing St. Michael street, and crossing St. Louis street, i. e. between the erection of the two houses before named.

28. If you know anything of the plaintiff, state where he has lived for the last six or seven years, to the best of your information; has he ever lived in Missouri; what has the plaintiff stated to you [on] this subject of his residence?

29. Do you know anything further material to the defendants, or any fact material to the issue between the parties, or to the evidence you have given; if so, answer fully and at large.

STEWART & EASTON,
For Defendants.

Filed April 15th, 1845.

JOHN FITTS, *Clerk.*

Circuit court of the United States, southern district of Alabama.

To Peter Hamilton and Thomas Hamilton, esqs.

Whereas, we repose in you full confidence, we have appointed you and do give you full power and authority, to examine all such witnesses as the plaintiff, in a certain cause pending in the circuit court of the United States, for the southern district of Alabama, in which Sidney E.

Collins is plaintiff, and Wm. R. Hallett and Robert L. Walker, executors of the last will and testament of Joshua Kennedy, deceased, J. H. Hastie and his wife, A. R. Meslier and his wife, J. G. Aiken and his wife, Augusta Kennedy and Joshua Kennedy, Samuel Kitchen, Wm. Kitchen, James Innerarity, James Campbell, and the Branch of the Bank of the State of Alabama, at Mobile, are defendants, may produce before you on interrogatories and cross interrogatories. And we do give you, and each and either of you, full power and authority to call said witnesses before [you] or either of you, and to examine them on their respective corporal oaths, at such time and place as you may appoint; and do hereby require you to reduce their answers to writing, and to cause the aforesaid witnesses to subscribe the same, and to enclose the same under your hands and seals, or either of you, unto the court aforesaid. Hereof fail not, and have you before the said court this commission with your return.

Witness the Hon. Roger B. Taney, chief justice of the Supreme Court of the United States, the 4th Monday of December, 1844, and of the American independence the 69th year.

JOHN FITTS, *Clerk.*

Issued 22d February, 1845. JOHN FITTS, *Clerk.*

This commission is approved. WM. CRAWFORD, *Judge.*

UNITED STATES OF AMERICA,
Southern district of Alabama:

Circuit court of the United States, for the fifth judicial circuit and district aforesaid.

SIDNEY E. COLLINS
vs.
WM. R. HALLETT and Robt. L. Walker, executors of Joshua Kennedy, dec'd, J. H. Hastie and wife, A. R. Meslier and wife, J. G. Aikin and wife, Augusta Kennedy, Joshua Kennedy, Samuel Kitchen, Wm. Kitchen, James Innerarity, James Campbell, and the Branch of the Bank of the State of Alabama, at Mobile.

In chancery in said circuit court.

By virtue of, and in pursuance of, the foregoing commission, issuing out of the circuit court of the United States, for the fifth judicial circuit and southern district of Alabama, in the above entitled cause in said court pending, the undersigned, commissioners therein named, caused the following named persons, witnesses on the part of the plaintiff, to wit, James Innerarity, William Kitchen, Samuel H. Garrow, Joseph Krebs, Henry V. Chamberlain, Origin Sibley, Cyrus Sibley, William Fisher, Augustin Demany, Edward Hall, Chester Root, Jaques Chickazola, Jacob Baptiste, John Fowler, Adolph Batre, Jesse Carter,

Joseph S. Kennedy, Charles Delage, Mary Rain, Sidney Smith, William Jones, jr., John Bloodgood, William Brooks, John K. Collins, Henderson Kinney, Daniel Walker, Jacob B. Walker, John S. Gliddon, John Ticknor, George Huggins, Joseph B. Earle, Daniel Robertson, Joseph Cain, Samuel Penny, John P. Renny, and David Jones, to come before them at the times and places following, to wit: James Innerarity, at the office of P. & T. Hamilton, in the city of Mobile, on 28th February, 1845; Samuel H. Garrow, at the same place, on the 1st and 3d March, 1845; Henry V. Chamberlain, at the same place, on 4th March, 1845; William Kitchen, at the same place, on 25th March, 1845; William Brooks, at the court house, in the city of Mobile, on 15 April, 1845; Samuel Penny, John P. Renny, and David Jones, at the mayor's office, in the city of Mobile, on the 25 April, 1845; before Peter Hamilton one of the commissioners in said commission named *in said commission*; Edward Hall, at the office of P. & T. Hamilton, on 13 March, 1845; Origin Sibley, at the same place, on 14 March, 1845; Jacob Baptiste, at the same place, on 15 March, 1845; Adolph Batre, at the same place, on 17 March, 1845; Augustin Demany, at the same place, 22 March, 1845; Joseph S. Kennedy, at the same place, on 25 March, 1845; Jessee Carter, at the same place, on 26 March, 1845; Jacques Chickazola, at the residence of said Chickazola, in the city of Mobile, on 28 March, 1845; John Fowler, at the office of P. & T. Hamilton, on 1st April, 1845; Charles L. Delage, at the office of P. & T. Hamilton, on 11th April 1845; Mary Rain, at the residence of her husband, Cornelius Rain, in the city of Mobile, on the 12th of April, 1845; Sidney Smith, at the office of the said Smith, in the city of Mobile, on 15th April, 1845; John Bloodgood, at the office of the said Bloodgood, in the city of Mobile, on 16th April, 1845; George Huggins, at the office of P. & T. Hamilton, in the city of Mobile, on 17 April, 1845; John Ticknor, at the same place, on 17 April, 1845; Cyrus Sibley, at the same place, on 18 April, 1845; William Jones, jr., at the same place, on 18 April, 1845; Daniel Robertson, at the same place, 19 April, 1845; William Fisher, at the same place, on 21st April, 1845; John S. Glidden, at the same place, on 21st April, 1845; Joseph Cain, at the same place, on 21st April; John K. Collins, at the same place, on 21st April, 1845; Joseph B. Earle and Daniel Walker, at the same place, on 23d April, 1845; Henderson Kinney, at the same place, on 24 April, 1845; and Jacob B. Walker, at the same place, on the 25th April, 1845; before Thomas A. Hamilton, one of the commissioners in said commission named, Chester Root, at the office of P. & T. Hamilton, in the city of Mobile, on 24th March, 1845; and Joseph Krebs, at same place, on 27 March, 1845, before Peter Hamilton, one of the commissioners in said commission named. And we, the said commissioners, do hereby certify, that the said witnesses were duly sworn on the holy evangelist to testify the truth, the whole truth, and nothing but the truth, in answer to the several interrogatories to them propounded, and which are herewith returned to the hon. the circuit court of the United States from the district aforesaid; that they

did, and testify as is written over their several signatures, and hereto attached; that their said answers were reduced to writing by one of us, the said commissioners, and after being carefully read over by the said witnesses, was by them subscribed in the presence of that commissioner whose name is thereto subscribed as attesting thereto; and that we are not either of us of counsel or attorney for either of the parties, or any of them, to said suit; nor are we, or either of us, interested in the event thereof.

Witness our hands and seals, this twenty-sixth day of April, anno domini eighteen hundred and forty-five.

PETER HAMILTON, [L. S.]
Commissioner.

THOS. A. HAMILTON, [L. S.]
Commissioner.

THE STATE OF ALABAMA,
Circuit court of the U. S.:

Interrogatories to be submitted to Samuel H. Garrow, to Nicholas Werks, sen., Catalina Mottus, and Henry V. Chamberlain, witnesses for the plaintiff in a cause pending in the circuit court of the United States for the southern district of Alabama, in which Sidney E. Collins is plaintiff, and Wm. R. Hallett and Robert L. Walker, executors of Joshua Kennedy, dec'd, and John H. Hastie and wife, A. R. Meslier and wife, J. G. Aikin and wife, Joshua Kennedy, Augusta Kennedy, and others, are defendants.

Interrogatories to S. H. Garrow, N. Werks, sen'r, Catalina Mottus, H. V. Chamberlain.

Interrogatory 1. Are you acquainted with that parcel of land, situate in the city of Mobile, bounded east by the Mobile river, and north by the Orange Grove tract, lying to the east of Royal street, known as the Alexander Baudain tract; will you state whether Joseph E. Collins and Wm. E. Kennedy set up any claim to that parcel of land, in connexion with each other, in Spanish times; will you state the facts you may know of this claim?

Interrogatory 2d. Will you state, if you know, of any acknowledgment by Wm. E. Kennedy, at any time in his life, of an interest in Joseph E. Collins in this tract of land? State [what] those acknowledgments were, and what was it that Wm. E. Kennedy said on the subject.

3d. Do you know *if* any work done or improvements made by Collins and Kennedy, or either of them, on this tract of land, in Spanish times, or at any other time; were there such improvements visible when you first *seen* this land; what do you know of the said improvements, and what account did Wm. E. Kennedy give of them?

4th. When and where did Joseph E. Collins die?

CAMPBELL & CHANDLER,
For plaintiff.

Interrogatories for Henry V. Chamberlain.

Will you look at the deed marked exhibit No. 2, and answer if you were a subscribing witness to the said deed; will you state when and where it was executed, before whom, and what took place at the time; was Joshua Kennedy present?

2. Did you hear at the time that the land embraced herein had been conveyed to Samuel Kitchen; who communicated the fact to Mr. Innerarity at the time; who drew the original deed; and at whose request were you a subscribing witness?

3. Were the original articles of agreement produced by Innerarity at the time, and did you then see them?

4. When did you hear of the conveyance of these lands to Samuel Kitchen; did Samuel Kitchen ever occupy them, or do you know of any control exercised by him over them; who has exercised the control over them, and appeared to the world as the owner since 1820?

5. Have you any knowledge of the circumstances under which the deed from Wm. E. Kennedy to Samuel Kitchen was made? State all your knowledge on the subject.

CAMPBELL & CHANDLER,
For Plaintiff.

Filed February 1st, 1845.

JOHN FITTS, *Clerk*.

Cross interrogatories.

CIRCUIT COURT UNITED STATES, *Mobile:*

SYDNEY E. COLLINS,
vs.
HALLETT & WALKER and others. } In chancery.

Cross interrogatories to be proposed to Saml. H. Garrow, N. Wicks, and Catalina Mottus, witnesses for complainant.

1. When did your acquaintance with this land, described as the Alexander Baudain tract, first commence; had you yourself any particular connection with it, or was your information merely casual and general; do you know anything in particular as to the transactions of Collins and W. E. Kennedy in this respect, and how did you become acquainted with them; were you a witness to any of their transactions, and what were they?

2. If you speak of any acknowledgment made by Wm. E. Kennedy, please say, if you can undertake to state at this distant period of time, what they were. Why do you recollect these more than any other conversations in which you have no interest; do you believe you can remember all conversations you heard so many years ago, or that you can now state correctly any one [of] such conversations of others, or even what you may yourself have then thought or said?

3. Were you intimate with Joseph E. Collins; did he live in Mobile, or where you lived; do you know when he died?

4. Please give all the particulars of all the information you may give,

and state all you know on the subject with accuracy and particularity; and state if you are certain of the facts, or if your recollection is indistinct.

STEWART & EASTON,
Solicitors for H. and Walker et al.

Filed February 10th, 1845.

JOHN FITTS, *Clerk.*

Additional interrogatories.

Additional interrogatories to be submitted to Samuel H. Garrow, Henry V. Chamberlain, Cyrus Sibley, Origin Sibley, and interrogatories to be submitted to Edward Hall, Chester Root, General Byrne, witnesses for the plaintiff in a cause pending in the circuit court of the United States, for the southern district of Alabama, in which Sydney E. Collins is plaintiff, and William R. Hallett and Robert L. Walker, executors of the last will and testament of Joshua Kennedy, deceased, and others, are defendants.

1. Were you acquainted with Joshua Kennedy and Wm. E. Kennedy in the year 1820, and for some years before and after that time; was there a close intimacy between the said persons in relation to all land titles in which they had an interest?

2. Do you know if Wm. E. Kennedy had not interested the said Joshua in several parcels of land to which he had title, especially the important claim derived from Price?

3. What were the habits of Wm. E. Kennedy about the year 1820, and from that time till his death; do you know how far he depended on the said Joshua for counsel, advice, and aid; did he live in dependence on him; had he abandoned himself to intemperance; and did he follow any regular and steady business; where did his children reside?

4. Were you acquainted with Samuel Kitchen; what was his occupation in 1820; where did he reside; did he live at a distance from Joshua Kennedy, or with him?

5. What was his estate at that time; did he own lands or slaves; if so, what lands and how many slaves, and how did he employ his slaves?

6. Did Samuel Kitchen ever reside in Mobile, or improve any property in this city?

7. Do you know the property east of Water street and north of Dauphin street; do you know under whose title that property is now held; was it conveyed to the present holders, or those under whom they derive title from Joshua Kennedy; is it held under Samuel Kitchen; did you ever hear that the present claimants hold under him?

8. What was the principal business and pursuit of Joshua Kennedy for the last twenty years of his life; was he laborious in the pursuit of land titles; and did he display great anxiety to possess himself of property of that description?

9. What was the reputation of Joshua Kennedy for shrewdness, tact,

and dexterous management in the acquisition and prosecution of claims for lands?

10. Do you know of any acquisitions of this kind by Samuel Kitchens; what have been the pursuits of the said Samuel for the last 25 years?

11. Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, answer fully and at large in your answers.

CAMPBELL & CHANDLER.
For plaintiff.

Interrogatories to James Innerarity.

THE STATE OF ALABAMA,
Southern district of Alabama:

In the circuit court of the U. S.

Interrogatories to be exhibited unto James Innerarity, a witness for the plaintiff in a certain cause pending *in the cause pending* in the circuit court of the U. S., wherein Sidney E. Collins is complainant, and Wm. R. Hallett and Robert L. Walker, executors of the last will and testament of Joshua Kennedy, deceased, J. H. Hastie and wife, A. R. Meslier and wife, J. G. Aikin and wife, John Kennedy, Augusta Kennedy, the Branch Bank at Mobile, and others, are defendants.

1. Look at the paper hereto attached, and state whether the originals executed by Wm E. Kennedy was ever in your possession; was the original made and executed to you; and were you the administrator of Joseph Collins at that time?

2d. Will you state if you have the original in your *possion;* do you know where it is; and have you the power to attach the same to your answers to these interrogatories; in whose hands was it when you last saw it; what has become of the individual who last had it; has he been dead for several years; has he any representative of his estate; and what *his estate, and what* has become of his papers?

3d. Will you state why the original deed was executed and delivered to you by William E. Kennedy; what inducements were offered by you to him at that time, or before; what did he say to you, and what acknowledgments did he make to you of his allegations; was the deed a free voluntary conveyance on his part?

4th. Will you state, if you know of the existence of the deed from Wm. E. Kennedy to Samuel Kitchen, a copy of which is hereto attached, *at* the time you received that deed; will you state whether Joshua Kennedy or Wm. E. Kennedy disclosed the existence of this deed to you?

5. State when and in what manner you became acquainted with the existence of the deed from Wm. E. Kennedy to Samuel Kitchen; did you have any reason to believe that deed was antedated and made to

defraud you of the rights which attached under the deed of Wm. E. Kennedy to you? Answer fully and particularly to every conversation you may have had with Samuel Kitchen, Wm. E. Kennedy, and Joshua Kennedy, or with either one of them, which furnishes any explanation of the transaction; and state every fact and circumstance that falls within your knowledge, that will throw any light upon the circumstances of the execution of these deeds.

6. Will you state whether Joshua Kennedy was present at the execution of the deed from Wm. E. Kennedy to you, before referred to; what transpired at the time this paper was executed?

7. Do you know of any facts of ownership, or other indications on the part of Joshua Kennedy, that the land embraced in this deed was held, either for Wm. E. Kennedy or Joshua Kennedy, by Kitchen; or have you ever heard, for either of them, that such was the fact?

8. Will you state whether you knew of this land during the time the Spanish governments occupied the territory about Mobile; state what claims to ownership or possession were made by Joseph E. Collins, during that time?

9. Do you know whether Wm. E. Kennedy improved the lot of land aforesaid, during Spanish times, by cutting ditches, making drains, and establishing a small house upon the land; was this done by him in connection with Collins, and in furtherance of this agreement? State fully and particularly every thing known by you in regard to these improvements, for what purpose made, of what agreement; and state any facts disclosed to you by Wm. E. Kennedy on the subject.

10. Will you state whether, as administrator of Joseph E. Collins, you applied for a confirmation of the estate of Collins to the lot described in the deed, or to any portion of it; why did you not prosecute that claim; was there any arrangement between Wm. E. Kennedy and yourself on the subject?

11. Did you have in your possession the original articles of agreement between Collins and Wm. E. Kennedy that are referred to in this deed; what did you do with those articles; and was the deed to you *interestested* as a satisfaction or recognition of those articles?

12. Have you ever heard of the claim of Thomas Price to lands in the city of Mobile; which claim was ultimately confirmed to Joshua Kennedy, as the grantee of Wm. E. Kennedy, during the Spanish times, or at any other time, claim the land embraced in the deed to you under the Price title?

13th. At the time that he executed the title to you, attached to this deed, *deed* he set up any claim to that land under the Price title adverse to your right?

14th. In Spanish times was it ever pretended by the Kennedys that the Price grant covered the land embraced in the deed to you; or under what claim was it held?

15th. Did you know Joseph E. Collins; when and where; did he die in the country formerly known as West Florida?

16. Do you know his children, George and Sidney E. Collins;

when did your acquaintance with them commence, and how long did it continue?

17. Did you, at any time, have any conversation with them upon the subject of the deed and articles of agreement therein referred to? And state what information you gave them on the subject; state when this conversation took place.

18. State in what manner you settled with Joshua Kennedy upon the subject of the claims held by you under the deed of Wm. E. Kennedy; state all that he said to you on the subject; state what he agreed to pay you; and tell every fact connected with the settlement?

19. Was the complainant counselled in regard to the same, or was he privy to it; did you ever have any conversation with him in regard to it?

20. State all that you may know which may be of benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this examination, or the matters in question in this cause. Answer fully and at large.

CAMBPELL & CHANDLER,
For Plaintiff.

Note.—The deeds referred to in these interrogatories are attached to the bill, and form exhibits No. 2 and 3, on file with the same.

C. & CHANDLER, *for Pl'ff.*

Filed February 1st, 1845.

JOHN FITTS, *Clerk.*

Cross interrogatories to James Innerarity.

SYDNEY E. COLLINS,
vs.
HALLETT and WALKER and others.

Cross interrogatories to be propounded to James Innerarity, witness for complainant.

Were you intimately acquainted with Joseph E. Collins; where did he reside; and where did he die; and at what time did he die?

2. Were you acquainted with Sydney E. Collins and with George Collins; where did you know them, and when did you see them last; how long is it since you have seen Sydney E. Collins; do you know where he is?

3. What was the general reputation of the country and people where Joseph E. Collins was known, as to his marriage with the mother of George and Sydney E. Collins; was Joseph E. Collins ever married, or was he living in concubinage with the mother of said children; were they considered legitimate or illegitimate children; was it not a fact well known, that their mother and father were not married?

4. What was the age of Sydney E. Collins at the time of his father's death; what was the age of George Collins?

5. At the time you became administrator of the estate of Joseph E.

Collins, had you any knowledge that he left a will; had you ever heard of any such will; did any one, within your knowledge, pretend to claim the executorship of said estate, or did you ever hear of any one acting as *exector* of his estate?

7. Was Joseph E. Collins indebted to you, or to the house of John Forbes & Co., at the time of his death; and in what amount, and how did said debt originate?

8. Was the debt a controverted one, or was it an admitted debt; and was it not a very large debt, for a man in his circumstances, as to property; was he not needy and a poor man?

9. Was Joseph E. Collins ever in possession of the land in controversy in his lifetime; who was in possession of it?

10. When and how did you first learn that Joseph E. Collins had any claim to said land; did you have the agreement evidencing said right; where did you get it?

11. Did not William E. Kennedy deny and resist the claim of right of Collins to said land, or did he at once acquiesce in it; did he deliver possession of the land at the time he made his deed to you; if not, why did he not deliver the possession as well as make the deed; was he in possession himself, at the time, or who was in possession of it?

12. Did you see George Collins at any time after he conveyed all his rights to the land in controversy to William Kitchen; if so, when did he express any dissatisfaction with his contract; did he claim any right after that time; did he appear to be intelligent, and to have a full knowledge of his own and of his father's affairs?

13. Did he express any dissent or dissatisfaction with the management of his father's estate by you; was not his whole course of conduct one of acquiescence as to what had been done by you and himself in this behalf?

14. Did Sydney E. Collins ever express any dissatisfaction that you know of?

15. Was not the debt due you paid; who paid it; when; and how much was it?

16. When did you hear for the first time of the claim now set up; did you ever hear of such a claim, either from Sydney or George Collins, or that they, or either of them, did ever pretend that they were not of age when they made their deeds; and has said Sydney been seen about Mobile since you heard of this claim?

17. Do you know whether said George and Sydney Collins made similar sales of their rights to other property; did they not, after they sold their claim in this case, also sell or compromise their claims to other property with Joshua Kennedy; and were they not friendly with him after that transaction, and always, that you know of; did they ever make any claim against him in his lifetime?

18. Who was in possession of the land in controversy when you obtained the deed from William E. Kennedy; did not Samuel Kitchen hold and claim the possession?

19. What was the probable value of the land at the time the deed of

Kennedy was made to you; what was it worth in 1825 and in 1830; when did that land rise in value, and when did it become of great value; was it not after it was filled up by Joshua Kennedy?

STEWART & EASTON,
Solicitors for Hallett and Walker et al.

Deposition of James Innerarity.

Answers of James Innerarity.

To the first interrogatory direct he answers: That the paper now shown him, and marked H, being a copy of a deed executed on 2d March, 1820, by William E. Kennedy, is a copy of a deed the original of which was in his possession from and after its date; the original was made and executed to this deponent, as it bears upon its face; and he was the administrator of Joseph Collins at that time.

To the 2d he answers: He has not the original deed now in his possession; he does not know where it is, and cannot attach the original to his answers here given; to the best of his recollection he gave the original, and other papers regarding the same property, to Joshua Kennedy at the time he made his deed to William Kitchen, on the 28th September, 1832, but received the money from Joshua Kennedy. He has never seen the original since he gave it to Kennedy. Joshua Kennedy is dead; he died in 1838; and William R. Hallett and R. L. Walker are his executors.

To the third he answers: That about the date of the deed from William E. Kennedy to this deponent there was a little dispute between them about the title to the land mentioned in said deed, and in consequence of this deponent's claim to the land, he owned Kennedy's right to the same under the title to Alexander Baudain, but insisted on Collins's claim to the same, and Kennedy's agreement with him under date of 1806, which this deponent had seen many years before in Collins's possession, and which afterwards came into deponent's possession; William E. Kennedy finally agreed to convey the land to him, deponent. The conveyance was made to this deponent for no other consideration than that named in the deed; no other inducement was offered; witness cannot remember all that was said, but William E. Kennedy finally acknowledged that Collins's title was superior to his; the deed was a free and voluntary conveyance.

To the 4th he answers: That his impression is, that at the time of the conveyance from William E. Kennedy to himself he had no knowledge of the existence of the deed from William E. Kennedy to Samuel Kitchen. He cannot state positively, but he has no recollection of the fact having been disclosed to him by either Joshua or William E. Kennedy.

To the 5th he answers: He cannot say when nor how he learned of the existence of the deed from William E. Kennedy to Samuel Kitchen; he probably learned it afterwards from his attorney. At the time it came to witness's knowledge, he did suspect the said deed was ante-

dated and intended to defraud him. The deed from William E. Kennedy to witness was made and acknowledged on the same day, to wit, 2d March, 1820; whilst the deed from Kennedy to Kitchen is dated 28th January, 1820, and is acknowledged that day two months. He cannot remember the circumstances attending this matter distinctly. He remembers nothing having been told him by Samuel Kitchen, or by either of the Kennedys, that furnishes any explanation of the transaction.

To the 6th he answers: He cannot remember whether Joshua Kennedy was present or not at the execution of the deed from William E. Kennedy to witness; he appears as a witness to the deed; but this deponent cannot recall any of the circumstances connected with the *the* execution of the deed, nor what transpired at the time.

To the 7th he answers: He knows of no acts of ownership over this property by either of the Kennedys prior to his (witness's) final disposal of it by his deed to William Kitchen in 1832, except the making of certain ditches upon the land by William E. Kennedy, in pursuance of his agreement with Joseph E. Collins. He never heard from either of the Kennedys, or from Samuel Kitchen, that the land was held for the benefit of either. In 1832, when witness conveyed the land to William Kitchen, he received the money from Joshua Kennedy, as he has already stated, but heard nothing of either of them as to whose the land was.

To the 8th he answers: He knew of this land during the Spanish occupation of this territory. Joseph E. Collins showed witness his titles from the Spanish government, and pointed out the land; at that time the ditches were already made upon the land, and Joseph E. Collins informed him they had been made by William E. Kennedy, in pursuance of his agreement with him, Collins, (a copy of which is contained in the paper marked A,) which agreement Collins also showed witness. Collins also claimed title to the whole originally, and witness knows of no one disputing the claim with him.

To the 9th he answers: He knows that William E. Kennedy did improve the land in the Spanish times by cutting ditches, &c., he remembers no house being built by William E. Kennedy. This information he had from Collins, as above stated, and he was also afterwards told the same by William E. Kennedy himself, and Kennedy represented it as having been done by him in pursuance of his agreement with Collins; by which, for doing so, he was to have half of the land; witness never heard of any other agreement.

To the 10th he answers: That he did not himself apply for a confirmation of the title to this land; he did not apply, because application had already been made for that purpose by a man by the name of Liniers, who had married Collins's wife, the woman he had lived with during the latter part of his life, and who in her right claimed the administration upon the estate, or as guardian of the children of Collins. There was no arrangement on this subject between witness and William E. Kennedy, to the best of witness's recollection.

To the 11th he answers, as he said before in his answer to 2d interrogatory: He had the original articles of agreement in his possession, but gave them to Joshua Kennedy in 1832. Witness always regarded William E. Kennedy's deed to him of 1820 as a recognition of the agreement he had made with Collins, November 4, 1806.

To the 12th he answers: He has heard of the claims of Thomas Price to lands in this city. The Price claim was confirmed to Joshua Kennedy, as grantee of William E. Kennedy. William E. Kennedy never did, during the Spanish times, claim any portion of the land contained in his deed to witness by virtue of the Price title. Afterwards, he talked of this land as being covered by the Price title, but it was all talk. He never rested his claim to this land upon the Price title.

To the 13th he answers: William E. Kennedy, at the date of his deed to witness, may have talked of this land being covered by the Price title, but he never rested his claim on that title; he had claimed it by virtue of the Baudain claim.

To the 14th he answers: In Spanish times, neither of the Kennedys ever pretended the Price claim covered this land, embraced in William E. Kennedy's deed to witness, and he never heard of William E. Kennedy (and he was the only one known as a claimant in those times) claiming the land at [any] time under any claim, but that derived from Collins.

To the 15th he answers: He knew Joseph E. Collins. He died in Pascagoula, in West Florida, some time about 1811.

To the 16th he answers: He was not intimately acquainted with Joseph E. Collins's children. George Collins he knew, Sidney E. Collins he has seen, but can hardly say he knows him. He knew George Collins about or after 1828, but can't remember the year precisely.

To the 17th he answers: He does not remember ever having had any conversation with either about the deed or articles of agreement between William E. Kennedy and Joseph E. Collins. He has had conversations with George about a property on Fish river.

To the 18th he answers: In 1832 he conveyed the land, described in William E. Kennedy's deed to him, to William Kitchen for $2233 $\frac{33}{100}$. This sum was paid to witness by Joshua Kennedy, being the sum decreed to be paid by the circuit court for this county, exercising chancery jurisdiction. This was all that was agreed to be paid. He cannot recollect what Joshua Kennedy said at this time, nor does he recollect the particulars of the settlement. This conveyance to Kitchen was the only settlement witness ever had with Kennedy.

To the 19th he answers: He never had any conversation with complainant with regard to this settlement. Witness never consulted him, nor does he know that he was consulted.

To the 20th he answers: He knows of nothing, beyond what he has already stated, of benefit to either party.

JAMES INNERARITY.

Answers to cross interrogatories.

To the first he answers: He was intimately acquainted with Joseph E. Collins. He resided in different places, sometimes at Fish river, sometimes in Mobile, and sometimes at Bon Secours, or Mobile Point. During the latter part of his life he resided at Pascagoula, West Florida, where he died about 1811.

To the 2d he answers: He was acquainted with George, but with Sidney E. Collins very little, if at all. He knew them in Mobile, and saw George Collins last some years ago, and Sidney E. Collins some eighteen months or two years since; witness does not know where Sidney now is.

To the 3d he answers: He believes the general impression was that the mother of George and Sidney lived with Joseph E. Collins without marriage, but does not know the fact; and if without marriage, he supposes the children would be considered illegitimate; whether their parents were or [were] not married he does not know, but his impression was they were not.

To the 4th he answers: He does not know the ages of George and Sidney E. Collins.

To the 5th he answers: He never heard of Joseph E. Collins having left a will; a man of the name Linier did interfere with the estate of Joseph Collins, but in what capacity he does not remember; he thinks as administrator or guardian to the children, whose mother he had married.

The 6th cross interrogatory appears crossed out.

To the 7th he answers: Joseph E. Collins was indebted to the house of John Forbes & Co. at the time of his death in the sum for which the land was sold to William Kitchen in 1832, interest included. This debt originated in a variety of accounts—balance due on account of grist [and] saw mill on Fish river; supplies furnished him, &c., &c.

To the eighth he answers: The debt to John Forbes & Co. was not disputed; it was a debt he was fully able to pay; he was not a rich man as to money, but held and claimed a good deal of land; he was not a poor man.

To the ninth he answers: Jos. E. Collins never lived upon the land; but as far as an undisputed title, without improvements upon the land, could go, he was in possession; nobody lived upon the land; Wm. E. Kennedy made the improvements on the lands, and, so far as they give possession, he was at that time in possession.

To the tenth he answers: He learned of Collins' claim to this land from Collins himself in 1806; witness had Kennedy's agreement in his possession; he got it from a man whose name was Lewis, witness thinks—he cannot give his christian name—who was with Collins about the time of his death, and had sundry of Collins' papers in his possession.

To the 11th he answers: That Wm. E. Kennedy did at first deny Collins' claim to this land, but made not legal resistance, and finally gave his deed to witness for the same; there was no formal delivery of

the possession of the land by Wm. E. Kennedy, but he gave his deed, and witness regarded himself in the possession; Wm. E. Kennedy never claimed such a control of the land as to lead witness to think he (witness) was not in possession; there was nobody living on the land at this time; nobody was in actual possession.

To the 12th he answers: He knew nothing of the conveyance from George Collins to Kitchen at the time it was made; he never had any conversation with George Collins about this conveyance, and he (George Collins) never expressed any satisfaction or dissatisfaction to witness about the matter; George Collins was an intelligent man, but what he knew of his father's affairs, or his own rights, witness cannot say.

To the 13th he answers: George Collins never expressed any dissatisfaction, so far as witness knows, with his (witness') management of his father's estate; he never made any objections or complaints to what witness did.

To the 14th he answers: He does not remember ever having had any conversation with Sidney E. Collins on the subject.

To the 15th he answers: The debt owing by Jos. E. Collins to Jno. Forbes & Co. was paid by Joshua Kennedy at the time of witness' conveyance to William Kitchen. It was, including interest, $2,233 22.

To the 16th he answers: He can't say exactly, but he thinks he first heard of this claim within a couple of years. He never had any conversation with either George or Sidney, about their deeds or their ages, at the time; it was about the time witness saw Sidney E. Collins in Mobile that he first heard of this claim.

To the 17th he answers: He knows nothing of the matters inquired of in this interrogatory.

To the 18th he answers: Nobody was in the actual possession of this land at the time Wm. E. Kennedy made his deed to witness; Samuel Kitchen was now in the actual possession of this land, so far as witness proves; at the date of the deed, to the best of witness' recollection, Samuel Kitchen neither held nor claimed the possession of the land.

To the 19th he answers: The land was worth very little in 1820; he can't fix any value upon it, neither can he say what its value was in 1825; lands in Mobile were low in those times; in 1830 it had increased in value; and in 1832 he thinks it might have been worth $3,000, a little over what he got for it from Joshua Kennedy; property began to rise in Mobile about 1832, and went on increasing in value till the bubble burst, and left us all in the suds; the filling up of this property by Joshua Kennedy no doubt greatly increased its value.

JAS. INNERARITY.

Sworn to and subscribed by the witness before me, this 28th day of February, A. D. 1845.

P. HAMILTON, *Commis'r.*

Additional cross interrogatories to Samuel H. Garrow, H. V. Chamberlain, Cyrus Sibley, Origen Sibley, Edward Hall, Chester Root, and Gerald Byrne:

Additional cross interrogatories to be submitted to Samuel H. Garrow, Henry V. Chamberlain, Cyrus Sibley, and Origen Sibley; and cross interrogatories to be submitted to Edward Hall, Chester Root, and Gerald Byrne:

1. Where did Wm. E. Kennedy live in the year 1820, and where did Joshua Kennedy then live; if there was a close intimacy between them, as supposed, or asked, in the first direct interrogatory, what was that intimacy; by what acts was it manifested; and which are the land titles to which you refer in your answer? Specify those land titles.

2. In what parcels of land to which Wm. E. Kennedy held title had he interested said Joshua; when did he so interest him; to what extent did he so interest him; how did he so interest him? If by deed, or other writing, produce or specify the same, so as to identify it.

3. Did Joshua Kennedy, before December, 1824, make any conveyances of lands of which the title was then held by Wm. E. Kennedy; were those conveyances acquiesced in by William at the time and afterwards?

4. If William E. Kennedy fell into intemperate habits, how early did those habits exist; was he intemperate in 1818?

5. Was William E. Kennedy a man over whom his friends generally, or many persons, had influence; was he of a yielding or accommodating disposition; did you ever know of any complaint, on the part of Joshua Kennedy, that William was fooling away or improvidently disposing of his property?

6. Can you say whether James Innerarity had, or was supposed to have, much influence over Wm. E. Kennedy; did you ever hear or know of any contention between William and Joshua arising from that cause; was there any dispute between them on account of William's selling Joshua a certain piece of property which he had previously deeded to James Innerarity? If you know anything of this dispute or contention, state when it took place, and about what property.

7. Did Samuel Kitchen, before 1820, do any work for Joshua Kennedy; if so, what was it; who made the running gear for Kennedy's mills, or was the millright when they were first built; who rebuilt those mills after they burnt down in the Indian war; who rebuilt them after they were burnt down about 1819 or '20; did Samuel Kitchen attend to any business for Joshua Kennedy before 1820; did he superintend his mills in Baldwin, and have charge of them; if so, how long?

8. How long have you known Samuel Kitchen; is his character that of a plain, straightforward, and industrious man?

9. Did Samuel Kitchen, at any time that you know of, claim as his own the property in the city of Mobile east of Royal street and between St. Louis and St. Anthony streets; if so, when was that claim made; did you know him to use said land, or do any work on it; if so, when,

and what was the work; did he build any house; if so, is that house still standing?

10. Did not Samuel Kitchen, about 1820, and afterwards, spend considerable time in Mobile; did he not often remain several weeks at a time there?

11. What was Samuel Kitchen's compensation for attending to and superintending Kennedy's mills; was he to receive a portion of the lumber sawed; if so, what portion; did he dispose of said lumber himself; did he bring any of it to Mobile for sale; if so, where did he land it?

12. Were you at any time interested in the mills spoken of as "Kennedy's mills;" if so, when; what was the average value each year of the lumber cut or sawed there from the time the mills were rebuilt, after the Indian war, until 1820; what from 1820 to 1825; did you ever make out any account current with Samuel Kitchen for his share of profit in said mills, or any part thereof; had he any interest in the proceeds of those mills at any time; and, if so, how long, and what was that interest?

13. Did you, at any time, know or hear of an act of Congress of the U. States, passed about 1824, giving to the corporation or mayor and aldermen of Mobile certain front property in said city, between high-water mark and the channel of the river; if so, when did you first hear or know of said act of Congress; how many years ago did you first become aware of the existence of said law; was it known, after its passage, to the citizens of Mobile, or any of them; who did you ever hear speak of it?

14. Do you know, or have heard, of the mayor and aldermen of Mobile claiming the property north of St. Louis street, and from Water street east to the river, by virtue of this or any other law; do you know of their having brought suit against Joshua Kennedy or his executors to recover this property?

15. State whether, in 1824, there was any street in the city of Mobile which bore the name of "North Boundary street."

16. Did the act of Congress granting the front property in the city of Mobile to the mayor and aldermen thereof at any time cast any doubts or suspicions upon, or otherwise depreciate, the other titles in said city to the front property in the estimation of those dealing in land titles; if so, to what extent?

17. Was Joshua Kennedy, in general, well acquainted with the laws relating to land titles; was he in general watchful as to what affected the titles to property in the city of Mobile; did Joshua Kennedy know of the act of Congress before spoken of?

18. In 1829 and 1830 did Joshua Kennedy own or claim any property in the lower part of the city of Mobile; if so, how much; was his interest in the growth of the city downwards as great as in its growth upwards?

19. Do you know the property east of Water street and north of Dauphin street; if so, state who are the present holders thereof to whom you

refer; name them; what do you know of their titles, and how did you acquire your information; what deeds have said holders, each and severally, for his portion, and when were those deeds made, and by whom; when and by what deed did Samuel Kitchen acquire title to that land? Specify said deed, that it may be identified.

20. Do you know of any person who claimed property in the front or water side of the city of Mobile compromising with the mayor and aldermen or corporation of said city for the claim of said corporation to said property, arising under the act of Congress before named; do you know of such compromises having been made by Wm. D. Stone, P. McLosky, Jonathan Hunt, Thos. P. Norris, and John Duncan, or either of them? If so, what grounds were the subject of such compromise; and what sums were paid by those persons therefor, or either of them.

21. State in whose handwriting is, or is believed by you to be, the paper hereto annexed, marked (A,) and subscribed Samuel Kitchen's account to S. H. Garrow, esq., No. 1, 1818; is the same a genuine document according to the best of your belief.

22. Do you know, or can you set forth, any other matter or thing which may be a benefit or an advantage to parties at the issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

STEWART & EASTON,
For the defendants.

Mr. Samuel Kitchen,

To S. H. Garrow, Dr.

1818.		
April 16	Cash paid you	$40 00
June 3	Cash paid you for bacon	18 33
"	Cash paid Frank	3 00
13	10 lbs. tallow	1 25
28	Cash paid you	30 00
"	Henry Gunnison	36 33
Oct. 30	Cash paid you	40 00
Dec. 3	Cash paid Henry Deltenitt's amount	53 50
"	John C. Brooks' amount	213 10
"	Teny McKurker & Co's amount	146 18¾
"	2375 feet of lumber, sold to Dyer, $20	47 94
"	500 feet to a barge	10 00
4	Garrow and Flemming amount	168 64¼
"	Balance due Samuel Kitchen	102 88½
		$300 00

Cr.

Dec. 3	By so much allowed you	
"	Your ninth of lumber sold, the amount being	610 97
Dec. 7	By balance due Samuel Kitchen	$102 88½

Mr. Samuel Kitchen,

To Garrow & Flemming, Dr.

1816.				
Nov. 9	Sundries per bill		$16 56¼	
Dec. 31	Do. do.		17 25	
1817.				
Jan. 17	1 pair ladies' shoes		1 62½	
"	1 set knives and forks		2 00	
"	1 iron pot		1 20	
"	24 lbs. coffee, at 25 cts.		6 00	
"	12 lbs. sugar		2 00	
"	1 lbs. salt peter		1 50	
21	1 bushel salt		1 25	
Mar. 24	47 lbs. bacon, at 18¾		8 81¼	
"	4 lbs. tobacco, at 75		3 00	
Jan. 13	Cash lent		10 00	
May 10	4 lbs. tobacco		2 00	
				39 38¾
30	1 keg rum		4 68¾	
"	4 lbs. best tobacco		3 75	
July 1	5 gallons rum		7 50	
2	5 gallons molasses		2 00	
"	2½ yds. dimity		2 50	
"	4½ lbs. tobacco, at 75		3 75	
"	14 lbs. coffee 4, and one penknife 75c.		4 75	
"	15 lbs. sugar 3, and 1 bushel salt		4 25	
"	12 yds. cloth, at 43¾		5 25	
"	1 hat 4 50, 1 barrel flour		19 50	
	Cash		5 00	
				62 31¼
July 21	2½ galls. molasses		2 50	
July 22	To 10 yds. R. sheeting		7 50	
Aug. 20	To 1 barrel flour		11 00	
"	3 doz. small buttons		1 12½	
"	4 lbs. tobacco		2 00	
Sept. 20	12 lbs. sugar		2 00	
"	4 lbs. tobacco		2 00	
"	4 galls. whiskey		5 00	
				33 12½
				$168 63¾

Answers of Saml. H. Garrow.

To the first direct interrogatory he answers: He knows the land described in the first interrogatory; the witness says he was not here in Spanish times, except for a few days; he settled here in 1813, upon the change of government; Jos. E. Collins was dead at the time witness came to this place; he knows nothing of the claim of Collins and Kennedy to this land, except what Dr. Kennedy told him.

To the second he answers: That Dr. Kennedy told him, shortly after he became acquainted with the Dr., that he (Dr. Kennedy) was interested in the land above spoken of in connection with a man by the name of Collins, who had been Spanish surveyor; witness does not remember his given name; that Kennedy was interested in the land by virtue of an agreement or understanding the Dr. and Collins had to-

gether; Dr. Kennedy told witness he, Kennedy, had made the improvements upon the land, which consisted of ditches through the land and embankments thrown up; these statements were made by Wm. E. Kennedy some time during the war, between 1813 and 1815.

To the third he answers: He was not here in Spanish times; but shortly after he came here Wm. E. Kennedy told him he had made the improvements on the land; these improvements were on the land when witness first saw it, and must have been made in Spanish times; the ditches and improvements on the land were good and substantial, and were visible and firm when witness first saw the land; he knows, and can say, the improvements were good, for he lived near the land, and at one time, by permission of Dr. Kennedy, used the land to pasture his calves.

To the fourth he answers: He does not know when nor where Joseph Collins died; he died before witness came to this country.

Answers to cross interrogatories.

To the first cross interrogatory he answers: His acquaintance with this tract of land commenced in 1813; witness had no further connexion with this land than that he occupied it at one time as a pasture for his calves; his information detailed in his answer to the direct interrogatory was derived from Dr. Kennedy in the ordinary course of friendly conversations with him; he knows nothing of the transactions of Collins and Wm. E. Kennedy, except already stated; he was no witness to any of their transactions; Collins was dead.

To the second he answers: He has already stated all the acknowledgments Wm. E. Kennedy made to him; he does not recollect these conversations any better than he recollects other conversations; he details only what his memory retains, and cannot say he remembers every thing he ever heard or ever thought.

To the third he answers: Collins was dead when he came to this country, and he never saw him; where he lived witness does not know; he was told he lived at Pascagoula.

To the fourth he answers: He has stated every thing with as much particularity as he can; and what he has stated he is certain occurred.

S. H. GARROW.

Sworn to and subscribed by the witness before me, this 1st day of March, A. D. 1845.

P. HAMILTON, *Com'r.*

Answers of Saml. H. Garrow to additional interrogatories.

To the first direct additional interrogatory he answers: He was acquainted with Joshua and Wm. E. Kennedy in 1820, and for some years before and after that time; there was a close intimacy between the Kennedys in the land claims in which they had an interest.

To the second he answers: That Wm. E. Kennedy did interest Joshua in the Price claim; he was present when a division of interest in

that claim was made, after Mathews' plan; he has no personal knowledge of their being jointly interested in other claims.

To the third he answers: Wm. E. Kennedy would drink whenever he had an opportunity; from 1820 to his death, Wm. E. Kennedy depended very much upon his brother Joshua for advice; he had great confidence in Joshua's opinion and judgment; he was addicted to intemperance, but not so much so as to be a street drunkard: he followed no regular business during the last two years of his life; he was a physician by education, but did not practise, unless among his friends; his children after his death, to wit, 1825, and witness thinks before his death, lived with Joshua Kennedy.

To the fourth he answers: He was in 1820, and since, acquainted with Saml. Kitchen, and Saml. Kitchen's occupation was that of a mill-wright; in 1820, Kitchens lived in Baldwin county, near the Mills, on the Tensaw; Joshua Kennedy and Kitchen *first* near together, in sight of one another, in Baldwin county, till Kennedy removed to Mobile; this was after Kennedy's marriage; before that Kennedy and Kitchen lived together.

To the fifth he answers: That all the property he knew Samuel Kitchen to possess was an interest in the saw-mill, on the Tensaw; Joshua Kennedy, Saml. Kitchen, and witness, were jointly interested in the mill; Kitchen's interest was one-ninth of the nett proceeds, about $1,000 a year; this was about 1830, for about that time witness sold his interest to Joshua Kennedy; whether Kitchen had any land or slaves, or not, witness does not know.

To the sixth he answers: Kitchen frequently came over to Mobile, but never resided here that witness knows of, or improved any property; witness removed to his place on the bay in 1819, and returned in 1823, so that his means of information were lessened.

To the seventh he answers: He knows the property mentioned in this interrogatory, but knows nothing of the title by which it is held.

To the eighth he answers: The principal employment of Joshua Kennedy, during the last twenty years of his life, was the acquisition of land titles; he owned also the mills above spoken of; but the acquisition of land was his principal business; he was laboring in the pursuit of land titles, and was very industrious in getting land claims perfected.

To the ninth he answers: The reputation of Joshua Kennedy was that of a shrewd, industrious, and managing man; he knew as much or more of land claim than any other man, and was anxious in the acquisition of land.

To the tenth he answers: He knows of no *acquision* of land in this way by Saml. Kitchen; said Kitchens built the mills on Tensaw, for witness and Kennedy, about 1816 or 1817, and had an interest in their operation, but since 1820, when witness sold out to Kennedy, he knows nothing of Kitchen's occupation and pursuits.

To the eleventh he answers: He has stated every thing he knows of benefit to the parties.

Answers to cross interrogatories to the above.

To the first he answers: He thinks that Wm. E. Kennedy lived at Bon Secour, in 1820, and Joshua Kennedy lived at the Mills on the Tensaw; witness knows of the two Kennedys being interested jointly in but one claim, to wit, the Price claim.

To the second he answers: The Kennedys were interested together, so far as witness knows, only in the Price claim; in this claim the interest of each was half, as he was informed by Dr. Kennedy; when this interest commenced witness does not know, but a division was made, as answered to second direct interrogatory.

To the third he answers: That, in 1820, Joshua Kennedy conveyed the square opposite the Presbyterian church, on Government street, to witness, but by consent of Wm. E. Kennedy; this conveyance was made by Joshua, after he had made some exchange with Wm. E., by which this square was understood to belong to Joshua.

To the fourth he answers: Whenever Wm. E. Kennedy came to town, after witness first knew him in 1813, and saw his friends, he was sure to get drunk; this habit continued pretty much to the same extent to his death.

To the fifth he answers: Wm. E. Kennedy was a man of easy disposition, and when drunk would give away any thing he had to his friends; he was at all times liberal, and Joshua often complained that Wm. E. was fooling away his property.

To the sixth he answers: He does not know whether or not James Innerarity had an undue influence over Wm. E. Kennedy; to the first he answers, he knows nothing of the matters inquired of in this interrogatory.

To the seventh he answers: As already stated, that Samuel Kitchen was a mill-wright, and rebuilt the mills for witness and Joshua Kennedy in 1816 or 1817, and had a ninth part interest in the mills for his pay; and during witness' connexion with the mills, Samuel Kitchen superintended the mill-work; who originally built the mills witness cannot say.

To the eighth he answers: He has known Samuel Kitchen since the Indian war in 1813 or 1814; and witness always considered him as an honest and industrious man.

To the ninth he answers: He has heard Samuel Kitchen say he claimed the land Innerarity was sueing for, and heard him say this at or near the court house at the time of the suit between Kennedy and Innerarity, but never knew him to use the land, or do any work upon it, unless he built the house for Joshua Kennedy, in which Joshua had all his papers; and witness will not say Kitchen did build that house, but he has a very vague impression that he did build it.

To the tenth he answers: He was not living in town himself from 1819 to 1823, but whenever he came to town he frequently met Samuel Kitchen here.

To the eleventh he answers: So long as witness had an interest in the mills, Kitchen's compensation was a ninth of the nett proceeds.

To the twelfth he answers: He has already answered every thing here inquired of; the proceeds of the mills witness judges, as near as he is now able, to have been from $8000 to $9000 per annum, from 1820 or 1825; he knows nothing of the value of the mills, having sold his interest in 1820.

To the thirteenth he answers: He heard of the act of Congress of 1824, shortly after its passage, granting certain property to the city of Mobile, and believes it was generally known to the citizens.

To the fourteenth he answers: He knows the city claimed all the front property under the law of 1824, and general instructions were given to the city attorney to sue for the property.

To the fifteenth he answers: He knows of no such street ever being in the city as North Boundary street.

To the sixteenth he answers: This act of Congress of 1824 did have an injurious influence upon titles to that property, but to what extent he cannot say.

To the seventeenth he answers: Joshua Kennedy was very shrewd in looking after land titles, and knew every act of Congress affecting his land claims, witness believes.

To the nineteenth he answers: He knows nothing of the matters inquired of in this interrogatory.

To the eighteenth he answers: In 1829 or 1830, Joshua Kennedy claimed lands in every part of the city, and would probably be interested whether the city went up or down.

To the twentieth he answers: He cannot recollect.

To the twenty-first he answers: The paper marked A is in his handwriting, except the last part of the account between Kitchen and Garrow and Fleming, and is a genuine document.

To the twenty-second he answers: Further this deponent saith nothing.

S. H. GARROW.

Sworn and subscribed by the witness before me, this 3d March, 1845.

P. HAMILTON, *Commissioner*.

Answers of Henry V. Chamberlain.

To the first direct interrogatory he answers: He has looked at the exhibit marked No. 2, and that he was a subscribing witness to the original instrument; witness thinks he witnessed the deed at the office of David Rust, esq., at that time a practising lawyer on Royal street in this city; can't say who drew the deed, but thinks it was in the handwriting of either David Rust or Samuel Nere; witness does not remember whether Joshua Kennedy was present at the time witnesses attested the deed; Messrs. Jas. Innerarity and David Rust *was* present; this must have been on the day the deed bears date; witness has no recollection of any thing particular or unusual occurring at the execution of the deed.

To the second he answers: He knew, at this time, that a part, an undivided part, he thinks, of this tract of land had been conveyed by Dr. Kennedy to Samuel Kitchen; he does not recollect that anything was said by any of the parties at this time of a previous conveyance having been made by Dr. Kennedy to Kitchen; he does not know that Mr. Innerarity knew of this previous conveyance, or that any body told him of it at this time; he does not remember who asked him to become a subscribing witness to this deed.

To the third he answers: He has no recollection of the original articles of agreement between Wm. E. Kennedy and Joseph Collins being produced at this time by Innerarity; witness remembers having heard of or seen them at some time, but cannot say whether they were or not produced at this time.

To the fourth he answers: He thinks it must have been at the time of the acknowledgment of the deed from Dr. Kennedy to Samuel Kitchen, before him, as one of the judges of the county court, to wit, on the 28th of March, 1820, that he first heard of this conveyance; his impression at first was, that he had heard of the deed earlier in the winter; but he thinks now that this was the first time that he had heard of it, his acquaintance with Mr. Kitchen dates from the time of this acknowledgment; Kitchen was present, and this serves to strengthen his memory on the point; witness knows that Kitchen did some work upon this land, and did exercise some control over it; Mr. Kitchen built some abutments on the land, and laid some timbers for a wharf; this was in 1822; he had also at this time a kind of a shed on the land, about the foot of what is now St. Anthony street; witness would say from 1822 to 1826 or '7, Kitchen appeared to be the owner; since that time Joshua Kennedy and his representatives have appeared to be the owners; before that time, 1826–'7, the land was of little value; about that time it began to improve in value.

To the fifth he answers: He does not know the circumstances under which the deed from Wm. E. Kennedy to Kitchen was made.

Answers to cross interrogatories.

To the first cross interrogatory he answers: He has no recollection of being called on for any other purpose than to witness the mere execution of the deed; witness does not remember whether Joshua Kennedy was or not present as stated in his answer to direct interrogatory, or that he was apprized of its contents.

To the second he answers: That, at the time of the execution of the deed from Dr. Kennedy to Samuel Kitchen, he knows of nobody being in actual possession of the land; the first actual possession that witness knows of was by Kitchen in 1822, when the wharf already spoken of was made; witness does not know that Kitchen laid claim to this land at any time prior to the date of the deed from Dr. Kennedy to Innerarity; Samuel Kitchen was the ostensible owner of the land for four or five years after 1822.

To the third he answers: Kitchen was the ostensible owner of this

land to 1826 or '7; this possession was continuous from 1822 to 1826 or '7; Kitchen claimed the land during this time as his; this possession consisted in the use of the land as a landing for lumber; the workmen lived, during the time they were at work upon the wharf, in a shanty upon the lot; and sometimes Kitchen stayed upon it during the work.

To the fourth he answers: The acts of ownership are mentioned in his answer to the last interrogatory; the improvements consisted in a wharf and abutment; there was a kind of fence built across the marsh on the north side of the wharf; this was about 150 yards north of St. Louis street, as it now runs; the fence run from the abutment of the wharf east to the water.

To the fifth he answers: He does not recollect of any claim of ownership or control being set up by either of the Kennedys to this land during the time Kitchen was the ostensible owner as above named; witness was very well acquainted with Wm. E. and Joshua Kennedy; and Dr. Kennedy frequently consulted witness about his business; Joshua did sometimes, but not so much.

To the sixth he answers: He has known the land described in this interrogatory since 1820; this land, in 1820, was subject to overflow in high tides to within 60 feet of Royal street; the balance of it was flat and marshy; its value, in 1820, was from $1,500 to $2,000; in 1830 Water street had been extended over the land, and its value then was not exceeding $6,000.

To the seventh he answers: This land began to be considered valuable from 1833 to 1835; it rose largely in value then, perhaps threefold; this was owing to a spirit of speculation at that time beginning to operate; this land was brought into notice by the extension of the buildings of the city northwards; the improvements on the land consisted of several large brick buildings, and the filling up of the property, and the erection of one or more wharves by Joshua Kennedy, Wm. F. Cleveland, and James Campbell, and others.

To the eighth he answers: He had a partial acquaintance with Jos. E. Collins; he last visited, and the only time he ever did visit, his house was in 1810, in company with Theodore Brightrode, in the fall of 1810, near the mouth of Pascagoula river, West Florida, now Jackson county, Mississippi; he stopped one night at the house; witness remembers Collins had two little sons at that time; their names he does not know; they were probably 4 and 2 years of age; the eldest had light sandy hair, light complexion and eyes; the younger had a darker complexion; but he saw less of him than the elder, and cannot give of him any further description.

To the ninth he answers: He saw, at the time of his said visit to Collins's house, and knew Miss Wilson, her christian name the witness does not remember, who lived at the time with Collins; the general reputation in the neighborhood, as to the marriage of Collins and the said Miss Wilson, witness does not know; he was informed by the commandant, residing at Pass Christian, Don Martin Pellerin, that they were not lawfully married; Brightrode also stated the same; witness's

own opinion was founded on these statements; Collins did not introduce the said Miss Wilson to witness and Brightrode at all, and said nothing about her; witness at that time lived at Pass Christian, about 20 or 30 miles from Collins's residence.

To the tenth he answers: He believes he has stated every thing he knows of benefit to either party.

H. V. CHAMBERLAIN.

Sworn to and subscribed by the witness before me, this 4th March, 1845.

P. HAMILTON, *Com'r.*

Answers to additional direct interrogatories.

To the first he answers: He was acquainted with Joshua and William E. Kennedy in 1820, and for some years before and after; there was a close intimacy between them in relation to their land titles.

To the second he answers: Previous to 1824 William E. Kennedy had conveyed half the Price claim to Joshua; they were also interested in the Harry Baudain claim. This was first claimed by William E. Kennedy; afterwards by Joshua Kennedy.

To the third he answers: The habits of William E. Kennedy from 1820 to his death were not good, but he had not completely abandoned himself to intemperance; he would sometimes drink to excess. After the death of Joseph P. Kennedy, William E. Kennedy, in matters of interest or importance, looked to Joshua for advice; before that time he frequently consulted his brother, Joseph P. Kennedy, who was a practising lawyer here. Witness knows of Joshua, in 1822 or '3, paying some claims against William E.; witness was then sheriff, and collected some executions against William E. of Joshua; but whether he was dependant on Joshua for a support witness cannot say. William E. Kennedy did not follow a regular business, but did practise his profession amongst his old friends. His children resided at Bon Secours until the death of their mother, (about four years before the Doctor's death;) after that time they lived with Joshua.

To the fourth he answers: He was acquainted with Samuel Kitchen; his occupation in 1820 was that of a mill-wright. From 1820 to 1830 he resided partly in Mobile and partly in Baldwin county. He resided for some time in a house adjoining Joshua Kennedy, in Mobile; afterwards in Baldwin county. During his residence in Mobile he lived on Joshua Kennedy's property, part of the time very near him, as stated above, and part of the time about one and a half miles distant.

To the fifth he answers: He can't say what his estate was; he does not know whether he own lands or slaves; he had one or two slaves under his control, but whether he owned them witness does not know. In 1819 he was taxed with some property, but what witness does not know.

To the sixth he answers: All the residence of Kitchen in this city, and all the improvements he made, has been already stated.

To the seventh he answers: East of Water and north of Dauphin streets, as high as St. Louis street, in this city. He knows none of the holders hold under Samuel Kitchens. Indeed, he does not know of any property north of Dauphin and east of Water being held under Kitchen. The whole of it is held under Joshua Kennedy, except the Holman property and the east part of Pierre Lucian's lot.

To the eighth he answers: The pursuits of Kennedy were various; his principal business, during the last twenty years, was the perfecting of land titles, and improving his property. He was active and laborious in the pursuit of land titles, and displayed more than ordinary anxiety to possess property of this description.

To the ninth he answers: Joshua Kennedy's reputation in the acquisition and perfection of land claims was that of a shrewd, persevering man.

To the tenth he answers: It was not apparently Mr. Kitchen's study or design to possess lands. Witness does not know of his acquiring any claims of this kind, except the deed from Kennedy for the land now in controversy. His pursuits have been working at his trade and farming in a small way.

To the eleventh he answers: He does not at present think of any thing else of benefit to either party.

Answers to additional cross interrogatories.

To the first he answers: In 1820 William E. Kennedy lived at Bon Secours, and Joshua lived at his mills in Baldwin county. The only claims they were mutually interested in, that witness knows of, were the Price and Harry Baudain claim, as stated in his answer to direct interrogatory. How they were interested, whether jointly in the whole, or each separately interested in parts, witness does not know.

To the second he answers: This [has] already been answered.

To the third he answers: He don't know that Joshua Kennedy did make any conveyances as supposed in this question.

To the fourth he answers: William E. Kennedy's habits of drinking began as early as 1816 or 1817.

To the fifth he answers: William E. Kennedy was not very yielding, or easily influenced, as witness knows; but he has heard Joshua complain of William E.'s selling property at half its value.

To the sixth he answers: He cannot answer this interrogatory. He knows very little, if any thing, of William E. Kennedy's connexion with Innerarity.

To the seventh he answers: About or before 1820, Samuel Kitchen did build some fences for Joshua at his place on the Spring Hill road. The mills in Baldwin county were built before witness came to the country, and witness does not know who built them. Samuel Kitchen was the mechanic who rebuilt the mills after the Indian war. Kitchen was employed about the rebuilding of them in 1819 or 1820. Kitchen superintended Kennedy's mills in Baldwin for about three years.

To the eighth he answers: He has known Samuel Kitchen twenty-five years; his character is that of a harmless industrious man.

To the ninth he answers: That from 1822 to 1826 or '27, Kitchen did claim the property described; before that time he cannot remember. The remainder of the question is already answered.

To the tenth he answers: Samuel Kitchen from 1820 to 1826 or '27, spent a good deal of his time in Mobile, and often stayed for several weeks at a time.

The eleventh and twelfth interrogatories are waived by Col. Aiken, of counsel for defendants, being answered by Captain Garrow.

To the thirteenth he answers: He heard of the act of Congress of 1824 giving certain front property to the city of Mobile; he heard of it shortly after its passage, and he believes it was generally known to the citizens.

To the fourteenth he answers: The city did claim the property described in this interrogatory under the act of 1824; and the city did bring suit to recover this property from Joshua Kennedy.

To the fifteenth he answers: There never has been a street in Mobile known as "the North Boundary street."

To the sixteenth he answers: The act of Congress of 1824, before alluded to, did cast doubts over titles to front property, and cause injury, but to what extent he can hardly say.

To the seventeenth he answers: Joshua Kennedy was in general well acquainted with the laws relating to land. He was watchful as to every thing affecting the titles to property in Mobile, and was acquainted with the act of Congress of 1824.

To the eighteenth he answers: Joshua Kennedy claimed land both up and down town, and was interested in the growth of the city upwards and downwards.

To the nineteenth he answers: There are now many owners to the land north of Dauphin street and east of Water [street.] William Jones, jr., Campbell & Cleaveland, Holman property, Jon. Hunt, Hitchcock's estate, are all interested. Their deeds witness cannot describe. He knows of no other interest of Samuel Kitchen, except what he derived by the deed from William E. Kennedy already mentioned, and which was acknowledged before witnesses.

To the twentieth he answers: He knows of several compromises made by claimants to front property with the city authorities for the city's claim under the act of Congress of 1824. He knows of the compromises made by John Duncan, and Hunt & Norris, and Judge Hitchcock. John Duncan agreed to pay the corporation $2,000 for its claim to some property lying between Water street and the river, and Dauphin and St. Francis streets. Hunt & Norris compromised a claim to some property in the same section of the city. Hitchcock also effected compromise for some property in the same section. The amounts paid by the two last witness does not know. These compromises were made between 1830 and 1835. The city constantly claimed this property, and several compromises were made.

The twenty-first cross interrogatory is waived by Col. Aiken, of counsel for defendants.

To the twenty-second the witness answers: Further this deponent saith not.

H. V. CHAMBERLAIN.

Sworn to and subscribed by the witness, before me, this 4th day of March, 1845.

P. HAMILTON, *Com'r.*

Interrogatories to be exhibited to Wm. Kitchen, a witness for the plaintiff in a suit pending in the circuit court of the U. S., in which Sidney E. Collins is plaintiff, and Wm. R. Hallett and Robert L. Walker, executors of the last will of Joshua Kennedy, deceased, Hastie and wife, Aikin and wife, Meslier and wife, the Branch of the Bank of the State of Alabama, at Mobile, Samuel Kitchen, and others, are defendants:

1 int. Do you know the plaintiff in this suit; were you, at any time, acquainted with him in the city of Mobile; how long did your acquaintance continue, and when did it terminate; when did you see the plaintiff last; were you acquainted with his brother, George Collins; where did your acquaintance commence and terminate; when did you last see him, and where?

2. Did you, at any time, receive from the hands of the plaintiffs the deeds, copies of which are attached as exhibits to the bill of the plaintiff, purporting to have been made to you, by the said plaintiff and said George, for a parcel of land on river Mobile, in this city, forming a portion of the Alex'r Baudain claim to the south of the Orange Grove tract and north of St. Louis street; if they were delivered personally to you, state by whom; on what consideration paid by you; at what place were they executed; and state every fact and every conversation to which the plaintiff or his brother were parties in your presence in relation to the conveyances; state what offers you made, or were made, to either of them in your presence, and what information was communicated to either of them; tell all you may know of the negotiations between you or between Kennedy and them, if you know, and state what Kennedy told you, discriminating between what you know and heard while the said parties were together and what Kennedy told you when alone with you.

3. Answer whether you commenced a suit against James Innerarity, administrator of Joseph E. Collins, for this land; state what instructions you gave in regard to this suit; for what it was commenced; state what you paid; did you pay the money yourself, (personally,) and receive the deed; did you conduct any of these transactions on your own account, or for your own benefit, or do you know anything of them of your own knowledge; where were you born?

4. Where are the originals of the deeds to you from the Collins', or from Innerarity; have you any of them in your possession; did you at any time have the care and custody of them; when did you make a

conveyance to Joshua Kennedy; what amount of money did he pay you, and for what purpose did he pay it; did you ever have a title to said lands claiming to hold in opposition to Kennedy?

6. Who was in possession of the lands specified in these deeds at the time that they bear date; did you claim to have any personal and individual interest in them? If so, state what your claim was, what part of the lands it affected.

7. Are you acquainted with these lands; what were their value in the years 1829, '30, and '31; have any improvements been established or erected upon them; who have made these improvements, and when?

8. Where did Joshua Kennedy reside during the year 1820; when did he come to live in the city of Mobile?

9. Where did Samuel Kitchen reside at the same time; how far did Samuel Kitchen reside from Joshua Kennedy; what was the connexion between Samuel Kitchen and Joshua Kennedy, and between Joshua Kennedy and yourself, and between Joshua Kennedy and William E. Kennedy?

10. Do you know whether Samuel Kitchen at any time had the possession of the lands aforesaid; if so, how was his possession manifested; did he expend any money in improvements; if so, state how much money; did he sell any portion of said lands; if so, to whom did he sell, and for what amount of money; did he occupy the lands by himself, or tenants; if so, when, and by whom? State who has been in the actual occupation of the lands since your acquaintance with them.

11. Do you know of any sales of any part of those lands? If so, state when and by whom the said lands were sold, and to whom the sales were made.

12. If you know anything material to the matter in dispute between the parties, or to the questions in contest in this suit, state the same, fully and at large.

CAMPBELL & CHANDLER,
For plaintiffs.

Cross interrogatories to be submitted to William Kitchen in the beforementioned cause:

1. Did Joshua Kennedy, in his lifetime, take other deeds in your name for lands, or land claims he had purchased, as well as those of George and Sidney Collins; was it his habit or mode of doing business; what reason did he give for it, or what was his motive in doing so, as expressed by him; mention the deeds taken by him as far as you can recollect them; what was his reason for so taking them?

2. Did any money consideration pass between you and Joshua Kennedy for any of the deeds for lands made by you to him, or by him to you?

3. Do you know of a contract of a sale of the lands the subject of this suit between Samuel Kitchen and Joshua Kennedy in the fall of 1835; look at the instrument of writing dated 28th of October, 1825,

hereto annexed, purporting to be an obligation from Samuel Kitchen to Joshua Kennedy to convey those lands to him, and witnessed by you and Samuel Kitchen, and say whether that instrument is genuine, and was it made at the time it bears date; did Samuel Kitchen then hold these lands; did he occupy them for his own uses and business; do you know whether from his purchase in 1820 up to that time he considered himself bona fide the owner of them; did you at any time in your life hear him say that, before said contract of sale, he held said lands for Joshua Kennedy?

4. State whether the deed made by Samuel Kitchen to you of those lands, in 1834, in the shape of a deed of gift, was designed and understood to be a fulfilment or completion of the sale or contract spoken of in the last preceding cross interrogatory; had you, before that time, received the title of the Collins and of Innerarity for Kennedy, and had you executed to Kennedy a quit claim for your interest therein; was it supposed by the parties that the deed of 1834 would vest the title in Kennedy so far as you know, even pretend that you were the real owner, or seek to disguise his ownership after he acquired it?

5. In executing the deed of 1834, did you then or since hear from the parties what equivalent in land or money was to be given in place of the lot reserved in the sale of 1825; was it to go to Samuel Kitchen or to you; have you or not reason to believe that an equivalent given by Joshua Kennedy to you would have been as satisfactory to Samuel Kitchen as if given to himself; what is your relationship to Samuel Kitchen?

6. State whether, after the deed of 1834 by Samuel Kitchen to you, you received from Joshua Kennedy a conveyance of any land; if so, describe it; what was the expressed consideration of said deed; was there in fact any money paid by you for said conveyance; what was the value of the lot so conveyed by Kitchen to you, compared with the value of the lot reserved in the sale of 1825, but included with *with* the other lands in the deed of 1834?

7. State whether, after the making the deed of 1834, Joshua Kennedy directed you to pay out of moneys you might collect for him any sum to Samuel Kitchen; did you pay that sum to Samuel Kitchen, or give him property, or otherwise satisfy him; what did you, in pursuance of such direction from Joshua Kennedy, if any was given you?

8. Did you hear from Joshua Kennedy, or know what his opinion was, of the value or validity of the claim set up by the heirs of Collins to this land; can you state whether his purchase of said claim was induced by his apprehension of it as a valid claim, or by a desire to purchase his peace; did not Joshua Kennedy give for this claim as much, or more, than he at the time thought it was worth; state your belief in relation thereto, and the facts and reasons on which such belief is founded; what did J. Kennedy say to you on the subject, about the time of the purchase, or afterwards?

9. State if you heard Joshua Kennedy express his opinion of the act of Congress of 1824, granting to the city of Mobile certain lands in

the front of the said city, between high water mark and the channel of the river; was it a source of apprehension to him respecting the title to the front part of these lands; did he often speak of it, and when; did he or not consider it as rendering the title to the front of this property insecure; what did he say on this subject; did you hear him speak on this subject as early as 1825, or shortly after the law was passed?

10. Do you know of a suit having been brought by the corporation of Mobile for the front part of these lands, claiming title thereto under said act of Congress; did Kennedy or his executors expend much money in defending said suit; what was the expense or cost of making defence thereto?

11. State what was the situation of this land at the time Kennedy purchased out the claim of the Collins; how far up from the river was it covered by water, or subject to be overflowed; what was then thought of the practicability or likelihood of profit from undertaking to reclaim such lands from the marsh, by filling up and raising them above the water; were these lands then in demand, or considered desirable; were they in the business part of the city, or in the suburbs, and if in the latter, how far out of the business region of the city; what do you think was the fair cash price of these lands at the time of Kennedy's purchase from the Collins, in 1829 and 1830; how would it then compare in point of value with the marsh lands of the Orange Grove tract, lying contiguous to the Baudain tract; how would it compare with the same; how was the value of such lands in 1829 and 1830, perfect and definite, or was it the subject of contrary and conflicting opinions; was it generally rated of as much value or little value; did you ever hear Joshua Kennedy, about the time of his trade with the Collins, express his opinion on his doubts in which direction the city would grow up or down; what did he say?

13. Did Joshua Kennedy at his own expense make and fill up the whole of Commerce street, running across or through those lands; what was the cost of the other improvements made by Kennedy on this land, besides the filling of it up; what were they, and did you superintend the making of them?

13. What has given this land its present value and estimation; when did they begin to come into notice; when did land or lots in the upper part of the city take their rise, and how far northward above these lands have the improvements been extended since Kennedy bought the claims of the Collins?

14. If you know or can state any thing material to the subject matter of this suit, or the matter in controversy, or the questions in issue between the parties, or to the matter of evidence on which you have been interrogated, set forth the same fully and at large in your answer.

STEWART & EASTON,
For the defendants.

The plaintiff objects to cross examination of Wm. Kitchen because it is irrelevant; 2d, he objects to the 5th, 7th, 8th, 9th interrogatories be-

cause they ask for statements of Joshua Kennedy which never have been called for by complainants. The plaintiff submits the following questions in reply to cross interrogatories :

1. When was the instrument in writing attached to the cross interrogatories executed ; who was present ; by whom was it drawn ; what amount of money was paid by Joshua Kennedy to Samuel Kitchen at the time ; what consideration, in property, was then given ; did Joshua Kennedy make any other instrument in favor of Samuel Kitchen at that time ; what was it ?

2. In 1825, by whom was the bond, prescribed in said agreement, owned ; had Joshua Kennedy conveyed that lot, of 60 feet by 120 feet north of St. Louis street, to any person ; and if so, to whom, and for what sum ; who was then in possession of it ?

3. When did Samuel Kitchen convey the land, specified in this agreement to you, by deed of gift ; who delivered you the deed of gift ; with whom did you reside at the time ?

4. When did you make the conveyance to Joshua Kennedy ; how long after you had received the deed of gift from Samuel Kitchen ?

5. Did Joshua Kennedy make you any conveyance of lands, or did he give you money for your deed to him ; how much ; when was this conveyance to you of lands made by Joshua Kennedy ; was it in his last sickness ; was it by his last will, or near the time when he settled his affairs ; what is the date of the conveyance to you ?

6. If Joshua Kennedy directed you to pay any money to Samuel Kitchen, state what reason he gave for it; what amount he directed you to pay, the date of the direction, and what amount paid by you. State all the facts connected therewith.

7. State every fact within your knowledge showing what Joshua Kennedy's claim to the bond specified was from the year 1819; in what manner did he assert it; state whether your father and himself had any contradictory interest in regard to it; did your father claim it adversely to his title; did he claim it at all; do you know what sum was paid to Wm. E. Kennedy by your father; do you know if any money was paid to him ?

8. Where did your father live from 1816 to 1825; where does he now live; what business did he pursue; was he the agent or overseer of Joshua Kennedy in the management of his mills; did he own any when up there, and what?

9. Did he own land and slaves; how much lands; where were they situate, and what was there value; state how many slaves he owned. This refers to the period from 1819 to 1825.

CAMPBELL & CHANDLER,
For Plaintiff.

STATE OF ALABAMA, *Mobile county :*

Know all men by these presents that I, Samuel Kitchen, for and in consideration of a valuable consideration to me in hand paid, do hereby obligate and bind myself, my heirs, executors, and administrators, and

do hereby agree and bind myself, my heirs, executors, and administrators, to legally convey and execute a quit claim deed of conveyance whenever called on for the same, or in two years from the date of *of* this instrument, to the said Joshua Kennedy, or to his order, and in case of his death to his children, to and for all that lot or piece of ground sold to me by Doctor Wm. E. Kennedy, by deed of conveyance dated the twenty-eighth day of January, in the year of A. D. 1820, and recorded March 29th, 1820, in book E, pages 26, 69, 70, and bounded on the west side by Royal street, south by St. Louis street, east by the river Mobile, and north by the north half of the lot or piece of land granted by the Spanish government to Henry Baudain, of which said granted land the aforesaid lot or described piece of land is the south half, excepting one lot of sixty feet front on the north side of St. Louis street, and extending one hundred and twenty feet back north.

In testimony of which I have hereunto set my hand and seal, this twenty-eighth day of October, A. D. 1825.

SAMUEL KITCHEN. [SEAL.]

Signed, sealed, and delivered, in presence of—
WM. KITCHEN,
SAMUEL L. KITCHEN.

The witness, Wm. Kitchen, in answer to 1st interrogatory says: He does not know the plaintiff in this suit, and has not at any time been acquainted with him that he knows of; he knew George Collins by sight, but had no intimate acquaintance with him; all that witness knew of him occurred between 1825 and 1830; witness last saw George Collins in the city of Mobile, but cannot say at what time.

To the second interrogatory he says: He never did receive from the hands of the plaintiff the original of the deeds mentioned in this interrogatory, copies of which are attached as exhibits to the bill of complaint; these deeds were never delivered to witness by any body; witness never paid any consideration for them, and witness does not know when they were executed; neither of the brothers, George or Sidney, ever had any conversation about those deeds with any body in the presence of witness; no offers of any kind, or any communications in relation to these deeds, was made to the Collins in presence of witness; witness does not know anything of the negotiations that took place about the matter; Joshua Kennedy never told witness anything about the deeds, or made any communication to witness in the presence of the young men; the whole matter was negotiated without the knowledge of it on the part of witness; Joshua Kennedy afterwards told witness that he had bought the right of the two young men to the property mentioned in the first interrogatory, and had taken the deeds in the name of the witness.

To the third interrogatory he says: He never commenced any suit against Mr. Innerarity as administrator of Jos. E. Collins for this land himself; he knows a suit was commenced and carried by Joshua Kennedy in witness's name, but witness had no interest in it; witness gave

no instructions to any body about this suit, and paid nothing on account of it; witness does not know what the suit was brought for, nor why; witness did not pay money to Innerarity, nor receive any deed from him, nor did he pay any money to any body, or receive any deed from any body; witness did not conduct any of these transactions himself, nor does he know any thing of them personally of his own knowledge; witness was born in 1805, in Georgia.

To the fifth interrogatory he answers: He does not know where the original deeds from the Collins and from Innerarity to himself are; he has not recollection of ever having seen them, and certainly has never had the custody of them; witness cannot say exactly when he made his deed to Joshua Kennedy for the property in question, but believes in October, in 1832; Joshua Kennedy paid nothing to witness for the deed; witness never had any title to said lands in opposition to Joshua Kennedy.

To the sixth interrogatory he answers: That at the date of the three deeds before referred to, in 1829, 1830, and 1832, Joshua Kennedy was in possession of the lands they described; witness never claimed to have any personal and individual interest in said lands; witness never had any interest in them.

To the seventh interrogatory he answers: He is acquainted with those lands, and would suppose them to have been worth, in 1829, '30, and '31, not more than $5,000; improvements have been made on said lands; Joshua Kennedy made these improvements, and continued so doing from 1825 or 1826 to his death.

To the 8th interrogatory he says: In 1820 Joshua Kennedy resided in Baldwin county; came to live in Mobile in 1823, or thereabouts.

To the 9th interrogatory he says: Samuel Kitchen, in 1820, resided in Baldwin county, and also in 1823; Samuel Kitchen and Joshua Kennedy resided about a mile apart, in Baldwin county, in 1820; Joshua Kennedy was the son-in-law of Samuel Kitchen, and brother-in-law of witness; Joshua and William E. Kennedy were brothers.

To the 10th interrogatory he says: Samuel Kitchen was a mechanic by employment, and was in the employment of Joshua Kennedy; witness knows that Samuel Kitchen at one time fenced this lot in and built a house upon it. He had Mr. Kennedy's hands to assist in the work, but whether it was done for himself or for Mr. Kennedy witness does not know. This is the only evidence of possession on the part of Samuel Kitchen that witness knows of. Witness does not know by whom these improvements were paid for, nor how much they cost. Witness does not know of his father ever selling any portion of this land. Samuel Kitchen occupied this land himself during one winter and spring, while he was making those improvements; this is the only occupancy of this land by Samuel Kitchen that witness knows of. Joshua Kennedy, ever since those improvements were finished, has been in the actual occupancy of this land.

To the 11th interrogatory, of his own knowledge, he knows of no sales having been made by any body; he heard Joshua Kennedy say,

he sold some of it to Campbell and Cleveland; but when they were sold, he does not know.

To the 12th interrogatory, as well as in answer to the additional interrogatories of plaintiff, he says: The deed from Samuel Kitchen to Joshua Kennedy was executed in Baldwin county. He has no recollection of who was present. The deed is in the handwriting of Joshua Kennedy; he has no recollection of any money being paid, and does not know what the consideration of the deed was. Witness has no recollection of Joshua's making any deed to Samuel Kitchen at that time, or in his favor. Witness does not know by whom, in 1825, the land reserved in this deed was owned; nor whether Joshua Kennedy had conveyed it to any body. It was in the same occupancy as the rest of the tract; it was all enclosed by the same fence, and this portion was not marked off in any way. Witness does not remember ever having had the original deed of gift from his father to himself, but presumes the copy attached to the bill is correct; and, if so, it must have [been] made on 8th January, 1834; nobody delivered the deed of gift to witness; in 1834 witness resided with Joshua Kennedy. Witness believes he made his conveyance of this land to Joshua Kennedy in October, 1832. The dates of the deeds as shown by the copies which are the only means of knowledge in power of witness, and which are now before him, and which he supposes are correct, show his deed to have been made about fifteen months before the deed of gift. Joshua Kennedy paid no consideration of any kind to witness for his deed. Joshua Kennedy did make a deed to witness in his last sickness, but it had no connexion with this transaction; it was a voluntary conveyance on the part of Joshua Kennedy; its date is in or near December, 1838.

Witness says some two or three days before he died, Joshua Kennedy directed him to pay his father $1,000, but gave no reason nor explanation for the matter. Witness knows of no conflict in the claims of Joshua Kennedy and his father; no adverse claim between them. His father, witness knows, did make a claim to it under Dr. Kennedy's conveyance to him. Witness knows nothing of the transaction between Dr. Kennedy and his father. Samuel Kitchen, from 1816 to 1825, lived in Baldwin county; he still lives in Baldwin county. His business was that of a mechanic, mill-wright and carpenter. He was Joshua Kennedy's agent in the management of his mills; what arrangement or what interest he had in them witness does not know. Samuel Kitchen, in 1825 and 1830, owned no slaves, he owned lands; he owned 640 acres in Baldwin county, which were worth some two dollars per acre, witness supposes; he never owned any slaves prior to 1830.

Cross examination of Mr. Kitchen objected to by the plaintiff.

Answers to cross interrogatories.

To 1st cross interrogatory: Joshua Kennedy did take other titles in the name of witness, as well as those from the Collins. Witness says, Joshua Kennedy took the titles of several pieces of land in his name, but cannot say whether it was his habit or mode of doing business, fur-

ther than those deeds would indicate. Witness does not recollect ever having heard Joshua Kennedy assign any reason for so doing; he remembers his once remarking, that he did not like to take titles that he thought not so good as his own which he purchased in his own name, for it looked like giving a credit to their titles. The deeds taken by Kennedy in witness's name. so far as he remembers, and one from John G. Walton, for some land in the Orange Grove, one from Slade for property down town, and various tax titles. Witness does not know Mr. Kennedy's reason for so doing in any case, except that of Walton, with regard to which he made the remark above stated.

To the 2d cross interrogatory he answers: No money consideration ever passed for any of the deeds for lands that passed between witness and Joshua Kennedy.

To the 3d cross interrogatory he answers: He only knows of the execution of the deed from Samuel Kitchen to Joshua Kennedy in 1825, but of the nature and terms of the transaction he knows nothing. Witness has looked at the deed or instrument attached, dated 28th October, 1825, made by Samuel Kitchen, and witnessed by deponent and his brother, Samuel L. Kitchen, and says it is genuine and was made at the time it bears date; whether at the date of this instrument his father held said lands or not he does not know. The only occupancy of these lands by his father that he ever knew of he has already stated in his answer to the 10th direct interrogatory, and whether this occupancy by his father and the improvement made were for account of Joshua Kennedy or for his father witness does not know, nor does he know whether the occupancy of the land before testified to by Joshua Kennedy, since those improvements, was in his own right or for his father; whether Samuel Kitchen continued bona fide the owner of them wit ness does not know. Witness never heard his father say he held these lands for Joshua Kennedy.

To the 4th cross interrogatory: He does not know what the contract in 1825 was, and does not know what the deed of gift in 1834 was intended for, as the copies of the deeds show. Witness had received the title of the Collinses and of Innerarity before this deed of gift; he knows this only from the copies by the deeds attached to the bill. Witness had executed his deed to Joshua Kennedy before this deed of gift. Witness does not know what the deed of gift of 1834 was intended for, nor what the suppositions of the parties in relation to it were. Joshua Kennedy never, so far as witness knows, ever pretended witness to be the real owner of the land, or ever sought to disguise his ownership of the property.

To the 5th cross interrogatory he says: He has never heard any of the parties say what equivalent in land or money was to be given [in] place of the lot reserved in the deed of 1825, nor to whom it was to go. He has never heard Samuel Kitchen say anything about it, and does not know whether the equivalent being given to himself (witness) would have been as satisfactory as if given to Samuel Kitchen. Witness is the son of Samuel Kitchen.

To the 6th cross interrogatory he says: He received, in 1838, from Joshua Kennedy, a conveyance of land at the southeast intersection of Water and State streets. This was the only deed witness ever received from Mr. Kennedy since 1834. The expressed consideration of that deed is $10,000. No money was paid by witness for said conveyance. The value of the lot at that time was probably $5,000, and worth about twice as much as the piece of ground he understands to be the reserved lot.

To the 7th interrogatory he says: That a few days before his death Joshua Kennedy directed him to pay Samuel Kitchen $1,000. Sam'l Kitchen has been paid that sum. In pursuance of that direction witness paid Sam'l Kitchen that sum by transferring its equivalent in property, with which he was satisfied.

To the 8th interrogatory he says: Does not remember of Joshua Kennedy's having expressed any opinion as to the validity, or worth, or value of the Collins claim. Witness cannot state from information of Joshua Kennedy what his motive was in purchasing the claim of the Collins. He cannot say whether Mr. Kennedy paid as much as he thought this claim was worth or not. Witness cannot give any opinion as to the value of the Collins claim, except what he derived from Joshua Kennedy afterwards. He has heard Mr. Kennedy say, that if the boys had any honor about them they would refund this money back to him, for he had to pay for the lands over again to Mr. Innerarity.

To the 9th cross interrogatory [he says:] He cannot recollect what Joshua Kennedy said about the act of Congress of 1824, nor what he thought of it. It was to him, as to the other land owners in the front of the city, a source of uneasiness, but to what extent witness does not know.

To the 10th cross interrogatory he says: He does know a suit was brought by the city of Mobile for some portion of the land now in controversy, under the act of Congress of 1824. The defence of this suit must have been expensive, but to what extent witness does not know.

To the 11th cross interrogatory he says: At the date of the deeds from the Collins, witness thinks all of the property to the east of Water street was covered with water, or subject to be overflowed. The reclaiming of these lands, and making them fit for improvements, was considered a pretty heavy undertaking at that time; and the profits to be derived therefrom depended on the course the city would take, up or down the river. If it went up, profit was certain. If it went down town, there could be no profit. These lands, witness thinks, were not much in demand. They were in the suburbs, and about one square beyond the business part of the city. The fair cash value witness would estimate about $5,000, in 1829 and 1830. This land was two squares nearer the business part of the city than the Orange Grove land, and was, of course, more valuable. It is probably worth now more than three times as much as the same quantity of land in the Orange Grove nearest the north half of the Baudain claim. In 1829 and 1830 the value of this land was fluctuating and unsteady, but always considered

valuable property. Witness has frequently heard Joshua Kennedy say he did not care in which direction the city should grow, he had lands at both ends of the city, it did not matter to him.

To the 12th cross interrogatory he says: Joshua Kennedy did, at his own expense, make and fill up the whole of Commerce street, running through these lands. The cost of the other improvements witness does not know. They consisted in building 3 wharves and a double 3-story brick house. Witness superintended the work.

To the 13th cross interrogatory he says: The growth of the city, and the improvement of this property, have caused its rise in value. It began to come into notice about 1835. Lots in the upper part of the city began to rise about that time. The improvements of the city extend about a quarter of a mile above this property, and have been made since the date of the deeds from the Collins.

To the 14th cross interrogatory he answers: He has stated everything material that he can call to mind.

WM. KITCHEN.

Sworn to and subscribed before me this 25th March, 1845.

P. HAMILTON, *Com'r*.

Circuit court of the United States, southern district of Alabama:

SIDNEY E. COLLINS
vs.
WM. R. HALLETT and R. L. WALKER, executors of the last will and testament of Joshua Kennedy, deceased, and others, defendants.

Interrogatories to be submitted to Wm. Brooks, a material witness for the plaintiff in the said cause:

1. Are you the principal deputy in the office of the clerk of the county court for the registry of deeds, and have the custody of the books of record of deeds and conveyances; how long have you been so?

2. Attach copies of the grant to Joseph Collins found in the book of translated Spanish records; when was the first translation made; is the original Spanish deed now in the office of the clerk?

3. Will you state if there is a grant to Thomas Price, or a deed to him, in the Spanish archives, and has it been translated; attach a copy of the same to your answer; is the copy attached the only one?

4. Is there in your office a grant from the Spanish government to Alexander Baudain for the land between St. Louis street and the Orange Grove tract? Attach copies of any such.

5. Look at the exhibits to the bill, and state if they are copies from the books of record of your office.

6. Will you say if there are any other deeds from Wm. Kitchen to Joshua Kennedy, other than those produced as exhibits to the bill; is there any deed from Sam'l Kitchen to Wm. Kitchen or Joshua Kennedy for the south half of the Baudain tract on record?

7. Attach copies of all the deeds on record from Thomas Price to Wm. E. Kennedy for the tract of land known as the Price claim.

8. If there are any deeds from Wm. E. Kennedy to Joshua Kennedy between the first of January, 1820, and the first of April, attach the same to your deposition.

9. If there are any deeds from Joshua Kennedy to Samuel Kitchen on record, attach the same to your deposition; if you have anything material to this issue, or to the evidence in this cause, or to the matter in controversy between the parties, answer the same, fully and at large.

CAMPBELL & CHANDLER,
For plaintiff.

Cross interrogatories for Wm. Brooks.

1. Are you acquainted with the Spanish language; can you, of your own knowledge, specify a deed as an original, the same being in the Spanish language, by comparing it with any translation, or other paper shown you?

2. By whom were the translations of the several grants made, which you attach to your answers, and when made?

3. Where are the original of these translations? If in the office over which you preside, attach copies of the same to your answers.

4. Whose deputy are you?

5. Is there on record, from Wm. E. Kennedy to James Innerarity, dated the 20th of February, 1818, for a piece of land running from Royal street to the river, bounded north by a lot belonging to James Innerarity, and south by street, (in book B, page 55?) If so, attach a copy thereof to your answer.

6. Is there on record any deed from Addin Lewis, mayor of the city of Mobile, to Robertson and Barnwell, for the south half of the tract of land included between the Orange Grove, St. Louis street, Royal street, and the Mobile river? If *you*, annex a certified copy thereof to your answer. (See book D, pp. 331, '2, '3.)

7. How many deeds are on record for property sold in the city of Mobile, from the 1st of September, 1829, to the 20th of November, 1830; how many of these are for property situated east of Royal street and north of St. Louis street?

8. If you know any thing material to the matters in contest between the parties, or the matters of evidence you have been asked about, answer fully.

STEWART & EASTON,
For defendants.

Filed March 16th, 1845.

JOHN FITTS, *Clerk.*

Cross interrogatories filed 24th March, 1846.

JOHN FITTS, *Clerk.*

Wm. Brooks, being duly sworn, in answer to the first interrogatory says: He is the principal deputy in the office of the county clerk of Mo-

bile for the registry of deeds; has in his custody the books of record of deeds and conveyances, and will have been in the office eight years next September.

To 2d interrogatory he answers: The papers hereto attached, marked A and a, are copies of the grant to Joseph Collins, found in the book of translated Spanish records; the first translation, A, was made by Osborne before witness came into the office, but he has no means of discovering the time when it was made; the next, a, was made by Joseph E. Caro, in July, 1840; the original Spanish deed is in the office of the clerk of the county court of Mobile, to the best of witnesses knowledge and belief; witness is not acquainted with the Spanish language, but the deed to which witness refers is and has been generally treated and looked upon as an original.

To 3d interrogatory he says: There is no original grant to Thomas Price in the office, but there are two translations: one purporting to be of a grant from Joaquim De Orsono to Price, the other is of a deed from James Brady to Price; copies of them are hereto attached, marked B and C; these are all the deeds and grants to Price to be found in the Spanish records.

To the 4th interrogatory he says: He has examined the office, and can find no grant from the Spanish Government to Alexander Baudain for the land between St. Louis street and the Orange Grove tract, consequently he cannot attach copies.

To the 5th interrogatory he says: He has looked at the exhibit attached to the bill of complaint, and says they are all copies from the books of record in the county clerk's office, except that purporting to be the copy of a will of Joseph Collins.

To the 6th interrogatory he says: There are no other deeds from Wm. Kitchen to Joshua Kennedy than those attached to said bill as exhibit, except one for a lot of land in this tract, fronting on Water, the east side of Water street, 40 feet, and running to the channel of the river, being a part of the land conveyed by Joshua Kennedy to him by deed of 26th November, 1838, a copy of which is hereto attached, marked D; there is a deed from Samuel Kitchen to William Kitchen for the south half of the Baudain tract, though the description of the boundaries calls for the whole tract; it is dated in 1834, and is one of the exhibits to the bill; there is no deed from Samuel Kitchen to Joshua Kennedy for the south half of this tract.

To 7th interrogatory: He has attached copies of all the deeds on record from Thomas Price to Wm. E. Kennedy, for the tract of land known as the Price claim, marked E, F, and G.

To 8th interrogatory: There are two deeds from Wm. E. Kennedy to Joshua Kennedy, between the 1st January and 1st April, 1820, copies of which are hereto attached, marked H and I.

To the 9th interrogatory: The only deed on record from Joshua Kennedy to Saml. Kitchen is hereto attached, marked K.

To the last interrogatory he says: He knows of nothing else material to the parties in this suit.

Cross interrogatories.

To the 1st cross interrogatory he answers: No.

To 2d interrogatory: The translations were made by Osborne and Caro; when Osborne's was made witness does not know; Caro's was made 21st July, 1840.

To 3d interrogatory he answers: The only originals in the office are the *gant* to Collins and the deed from Brady to Price, copies of which are attached, marked L and M; in the grant there is one word that cannot be made [out;] a space is left for it in the copy attached.

To 4th interrogatory he says: He is the deputy of Drury Thompson, clerk of the county court of Mobile county.

To the 5th interrogatory he says: There is such a deed as described in this interrogatory on record; a copy is attached, marked N.

To 6th interrogatory he says: There is on record such a deed as described in this interrogatory; a copy is attached, marked O.

To 7th interrogatory he says: There are 257 deeds on record of property sold in Mobile, from 1st September, 1829, to 20th November, 1830; two of these are for property situated east of Royal street and north of St. Louis street, to wit, the deeds from George and Sidney Collins to Wm. Kitchen.

To 8th interrogatory: He knows nothing else material to either party.

WILLIAM BROOKS.

Sworn to and subscribed before me, this 15th day of April, A. D. 1845.

P. HAMILTON, *Com'r.*

A, in Wm. Brooks' testimony.

The commandant, Osorno, to Joseph Collins, senior commandant: Joseph Collins, captain of the Fish River dragoons, in the most respectful manner represents to your honor, that there is a lot of vacant land, containing thirty-two perches in front, on Royal street, being bounded on the north by the lands of Panton Leslie, and bounded on the south by Saint Louis street, and on the east by the river Mobile; which said land is wet and marshy, and for this reason no one has heretofore petitioned for a grant for the same. Your petitioner therefore humbly prays that your honor may be pleased to grant him the said parcel of land, as the same is designated and represented on the plan hereto annexed. (Deba.) Mobile, the third day of January, in the year of our Lord one thousand eight hundred and three.

(Signed) JOSEPH COLLINS.

I, Don Joachim de Osano, captain of the regiments of Louisiana infantry, civil and military commandant of the town of Mobile and its jurisdiction, and sub-delegate of the intendant general of these provinces, do by these presents make known, that since the death of his excellency, Manuel Sirrano, the assessor of this intendancy, it has been ordered that matters relating to petitions for grants of lands shall be suspended. Now,

therefore, I, by these presents, do grant permission to the above named Joseph Collins, captain of the dragoons attached to the militia of Fish river, and special surveyor of this district, to take possession of the lot and parcel of land which is designated in the plan or plot of the same hereto annexed, without let, impediment, or molestation from any one: Provided, always, that the same land is vacant and unappropriated, and that no one shall thereby be injured; but upon condition that, as soon as an assessor shall have arrived on this provinces, the petitioner, in the manner prescribed in such cases, shall present the necessary documents to be transmitted to his excellency, the intendant general of these provinces, in order that he may be furnished with the necessary titles to the above described tract of land in due form.

Given at Mobile, the twenty-sixth day of April, in the year of our Lord, one thousand eight hundred and three.

JOAQUIM DE ORSONO.

[For plat see original.]

"*A.*"—(Caro, p. 295.)

To his honor the commandant, Joseph Collins, captain of the Fish River dragoons, in the most respectful manner, represents to your honor that there is a vacant lot of ground containing thirty-two perches in front on Royal street, bounded on the north by lands belonging to Messrs. Panton, Leslie & Company, on the south by Saint Louis street, and on the east by Mobile river; which land has never been asked for on account of its being marshy ground; therefore he humbly prays that your honor will be pleased to grant him the above tract of land, with its depth as far as the river, agreeably to the preceding figurative plan, on which the same is designated. Mobile, third of January, one thousand eight hundred and three.

(Signed) JOSEPH COLLINS.

Joaquim de Orsono, captain of the regiment of Louisiana infantry, civil and military commandant of the town of Mobile and its jurisdiction, and sub-delegate of the intendancy general of these provinces since the death of his honor the assessor of this intendancy, Manuel Serreno: It has been ordered, that all matters relating to petitions, asking for grants of lands should be suspended; therefore, I do, by these presents, grant permission to the said Joseph Collins, captain of Dragoons attached to the militia company of Fish river, and special surveyor of this town, in order that he may take possession of the lot of land designated in the preceding memorial, and according [to] the plan hereto annexed, without any impediment, provided the same is vacant, and without causing injury to a third person; but upon condition that, as soon as the successor of the late assessor, deceased, should arrive in these

provinces, the petition, in the manner prescribed in such cases, shall present the necessary documents in relation thereto, to be submitted to his honor the intendant general of these provinces, so as to provide to the petitioner the corresponding title in due form. Mobile, twenty-sixth day of April, one thousand eight hundred and three.

JOAQUIM DE ORSONO.

B.—(Osborne, p. 211.)

The commandant, Orsono, to Thomas Price, senior commandant and sub-delegate of the Royal treasury: Thomas Price, who is the interpreter of the English language at this post, in the most respectful manner, represents to your honor, that there is adjoining the back part of his dwelling house a lot of vacant land, which still constitutes a part of the Royal domain, the same containing one hundred and forty feet in front, and the same number of feet in depth, which, in addition to the lot that he now owns, would afford him the means of furnishing himself with such necessaries and comforts of life as are, indeed, indispensable, but of which he is deprived by reason of the low and marshy condition, as well as the limited size of his lot; and, at the same time, from these causes, he experiences from day to day a very sensible diminution of health. Your petitioner further respectfully represents to your honor, that, by reason of the small amount of pay which he receives, he is not able, except in the way he now takes, to obtain possession of the said lot of land; he therefore very humbly prays that your honor may be pleased, for the above reasons, and in consideration of his few and imperfect services (*cartes* services), to grant him a title to the above described lot of land, that he may derive therefrom the benefits herein above mentioned. This favor he humbly hopes to receive from the well known goodness of your honor. Mobile, the third day of February, in the year of our Lord one thousand eight hundred and three.

(Signed) THOMAS PRICE.

In consequence of the death of his excellency the assessor of the intendancy general of this province, it has been ordered and decreed by his excellency John Ventura Morales, intendant general thereof, that, until another assessor is appointed, there shall not be sent to that officer any petition relative to lands; and it appearing to me that the prayer of the above petitioner is just and reasonable, I thereupon do hereby grant him the lot of land described in the above memorial, in order that he may immediately enclose the same, and erect the necessary buildings thereon, but upon the express conditions that, as soon as the office of the intendancy shall be again open for such matters a valuation of the same lot of land shall be made in pursuance of the manner specified in the regulations on this subject, and all the documents and proceedings relative to said lot of land shall be transmitted to the said office, in order that the petitioner may obtain the necessary titles to the same in due form; in the mean time this instrument of writing shall be a sufficient title for the said lot of land.

B23.

Given at Mobile on the twenty-fifth day of February, in the year of our Lord one thousand eight hundred and three.

(Signed) JOAQUIM DE ORSONO.

C.—(Caro, translation p. 268.)

Know all men by these presents, that I, James Bready, of the town of Mobile, do warrant, that I sell really and truly to Thomas Price, Indian interpreter of the town aforesaid, a certain lot of ground, with a small cabin erected thereon, containing said lot sixty feet in front by the usual depth of one hundred and twenty feet, situated on Saint Charles street, bounded on the north by public land, and on the south by another lot belonging to Gabriel Trinne, junior, which lot and cabin above mentioned belongs to me, having obtained the same by virtue of a grant issued in my favor by his excellency the governor general of these provinces, as appears by the original document on file in the archive's office of the town aforesaid; and I sell it to the said Thomas Price, free from mortgages and other incumbrances whatever, for the sum of one hundred and fifty dollars cash to me in hand paid, renouncing the proof, the laws of delivery, that of the renunciation, provision fraud, and of all others thereto relating, and grant a final receipt by virtue thereof. I relinquish and divest myself of the right of property, possession, useful claim in and ownership which I had and held in and over the premises aforesaid, and will renounce and transfer the whole unto the purchaser, or to his lawful representatives, so that, as his own property, he may enjoy, possess, sell, alienate, or dispose of the same at his will, in virtue of this deed, which I make in his favor in token of real delivery without the necessity of any further proof, with which I relieve him; and I bind myself to the execution and warranty of this sale in all the forms of law, and in such manner as to suit the purchaser, with my property present and future, with power and submission to the justice of his Majesty, which causes it to be executed; and I, the above named Thomas Price, being here present at the execution of this deed, do accept it in my favor, reserving therefrom the said lot of land and cabin as purchased for the sum and agreeably as sold to me, acknowledging the same to be placed at my disposal, and grant a final receipt.

In testimony whereof, the present is done in the town of Mobile, on the twenty-seventh day of the month of November, in the year of our Lord one thousand and eight hundred, I, Manuel de Lazos, a retired captain of infantry, political and military commandant of the town aforesaid, attended by two official witnesses for want of a regular notary, do hereby certify, that I know the parties who have thus acknowledged and signed the foregoing in presence of the above witnesses, who have hereto signed their names with the said parties, and we, the said commandant. (Signed) THOMAS POWELL,

For James Bready. [L. S]

THOMAS PRICE, [L. S.]

Before me, MANUEL DE LAZOS, [L. S.]

Francisco Hauntin de Herra Dalbutton Gomez.

D

To all people to whom these presents shall come, greeting:

Know ye, that William Kitchen, of the county of Baldwin, State of Alabama, for and in consideration of the sum of twenty thousand dollars, lawful money of the United States of America, to him in hand paid by Joshua Kennedy, of the city of Mobile, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath remised, released, and forever quit-claimed, and by these presents do remise, release, and forever quit-claim, unto the said Joshua Kennedy, in his full and actual possession now being, and to his heirs and assigns forever, all the estate, right, title, interest, use, trust, property, claim, and demand whatsoever, at law, as well as in equity, in possession as well as in expectancy, of, in, to, or out of, all and singular that certain piece of land, and land covered with water, in the city of Mobile, fronting on the east side of Water street forty feet, and extending thence eastwardly, parallel with State street, to the channel of Mobile river, with the same width of forty feet, and fronting on the south side of State street the whole length, so far as said street extends eastwardly from Water street; the same lot being bounded on the north by State street, on the west by Water street, on which it fronts forty feet as aforesaid, on the south by lands of Joshua Kennedy, and on the east by the channel of the Mobile river; together with all the tenements, hereditaments, and appurtenances, water privileges, and all other rights thereunto belonging. To have and to hold the said released premises, unto the said Joshua Kennedy, his heirs and assigns, to his own proper use, benefit, and behoof, forever; so that neither the said William Kitchen, his heirs or assigns, nor any other person or persons in trust for him, or in his name or names, or in the name, right, or stead of any of them, shall or will, can or may, by any ways or means whatever, hereafter have, claim, challenge, or demand, any right, title, interest, or estate, of, in, and to or out of the said premises above described and hereby released; but that him, the said William Kitchen, and his heirs and assigns, each and every of them, forever, all estate, right, title, interest, property, claim, and demand whatever, of, into, or out of the said premises, or any part thereof, and is and shall be by these presents forever excluded and debarred.

In witness whereof the said William Kitchen hath hereto set his hand and seal, this twenty-fourth day of November, in the year of our Lord one thousand eight hundred and thirty-eight, at Mobile.

WILLIAM KITCHEN. [SEAL.]

Signed, sealed, and delivered, in presence of—
GEORGE N. STEWART,
WILLIAM BROOKS.

Received in office for record, November 27th, 1838, book W, pages 517 and 518.

THE STATE OF ALABAMA, *Mobile county:*

Be it remembered, that the above named William Kitchen appeared personally before me, William Brooks, a notary public in and for said county, duly commissioned and sworn, and acknowledged that he signed, sealed, and delivered the above deed of quit-claim to Joshua Kennedy, on the day and year, and for the uses and purposes therein mentioned.

Given under my hand and seal, this twenty-seventh day of November, A. D. 1838.

WILLIAM BROOKS, *Notary Public.*

This deed of sale, made the sixth day of June, in the year of our Lord one thousand eight hundred and ten, by and between Thomas Price, of Mobile, in West Florida, of the first part, and William E. Kennedy, of the same place, of the second part, witnesseth:

That whereas the said Thomas Price conveyed, on or about the twenty-second day of November, in the year eighteen hundred and six, all that tract of land granted to him by the Intendant Morales, in the month of September, eighteen hundred and six, to the said William E. Kennedy, excepting ten acres in the northwestern corner of said concession of land; and whereas, in or about the month of August, in the year eighteen hundred and seven, the said Thomas Price, in and for the consideration of five hundred dollars, to him paid, by the party of the second part, in the commandant's office, sold and conveyed to the said William E. Kennedy all that tract of land granted to him by Governor Manuel Gayoso de Lemos, the eighteenth of November, seventeen hundred and ninety-eight, and confirmed to him by Colonel Maxent, the twenty-fifth of November, in the year eighteen hundred and six; and whereas it now appears, or is supposed, that said deed of sale is lost, mislaid, and missing from the archives, or has been removed to the intendant's office at Pensacola; therefore, it is now mutually covenanted and agreed, to, by, and between the contracting parties, that in case the said deed of sale made and executed before the Commandant Maxent should be found, then and in that case the said party of the second part, his heirs or executors, or administrators, for and in lieu of the ten acres of land reserved by the said Price in the conveyance made by him, on the twenty-second of November, 1806, to said Kennedy, and in full satisfaction and compensation of all reserves, contracts, and agreements heretofore made by and between the said parties, is bound to convey to said Thomas Price, his heirs and assigns, ten superficial acres of land out of the said six hundred arpens granted by Governor Emanuel Gayoso de Lemos to said Price, and conveyed by him to said William E. Kennedy as aforesaid, and which ten acres of land shall begin at a point on the southern boundary line of Poplar Grove tract of land, then owned by John Forbes & Co., whence a line continues northerly from the western side of St. Joseph street, on the same corner of said street, may intersect John Forbes & Co's southern boundary line therein from said point to run so far west, and also so far southerly

the same course of the western side of St. Joseph street to points, as that two other lines parallel to the said mentioned lines of equal lengths will make the same quantity of ten superficial acres, to include the field house and well, water mills by said Price; with which described ten acres of land and satisfactory considerations heretofore received by him, the said Thomas Price does hereby acknowledge to be satisfied, compensated, paid, and content for all reserves, contracts, and agreements heretofore made by and between the said contracting parties.

Now, this deed of sale witnesseth, that the said Thomas Price, the party of the first part, [in] execution of the premises, and for and in consideration of the sum of seven hundred dollars to him in hand paid by the said William E. Kennedy at and before the signing, sealing, and delivery hereof, the receipt whereof is hereby acknowledged, have granted, bargained, sold, alien, and released, and forever quit-claimed, and by these presents doth grant, bargain and sell, alien, release, and quit-claim, unto the said William E. Kennedy, his heirs and assigns, forever, all that certain piece, parcel, or tract of land, containing about eleven hundred arpens, bounded northerly by a tract of land now claimed by John Forbes & Co., called Poplar Grove, and by lands claimed by William Fisher; westerly by lands granted to Anthony Eship; southerly by lands granted to Simon Favar; easterly by lands to Francis Collell, and also to William McCoy; and by lots on the western part of the town of Mobile, occupied and possessed by Charles Lelory and Benjamin De Brocoa, and by the Mobile river; and having such shapes, form, and marks as will more fully appear by references to the concession of Colonel Franco. Maxen de St. Maxent. Done at Mobile, the twenty-fifth November, eighteen hundred and six; granting and confirming the said lands to the said Thomas Price; and it is hereby covenanted and agreed upon, by and between the said contracting parties, that the said Thomas Price, his heirs, executors, or administrators, shall and will, for the aforesaid consideration, at any time hereafter when requested, convey before the commandant, or any other competent authority, unto the said William E. Kennedy, his heirs and assigns, forever, as may be by him required or requested, the said piece, parcels, or tracts of land above described, reserving and excepting therefrom only the aforesaid described ten superficial acres; and also that any want of form of this conveyance, and it not being signed and executed before the commandant, shall not impair or invalidate the same; and also that this deed shall be good and valid in law; together with all and singular the rights, titles, privileges, and appurtenances thereto belonging, excepting the ten superficial acres heretofore described and excepted therefrom. To have and to hold the said piece, parcel, and tract of land, containing about eleven hundred arpens, bounded, granted, and confirmed by Colonel Maxent, as before described, and all and singular other the premises heretofore granted and conveyed, with the appurtenances to the same belonging, (except as before excepted.) unto the said party of the second part, his heirs and assigns, forever.

In witness whereof I have hereunto set my hand and seal, the day and year first above on the other first written.

THOMAS PRICE. [L. S.]

Signed, sealed, and delivered in presence of—
LEWIS SEWELL,
LEON NICHOLAS.

STATE OF ALABAMA, *county of Mobile:*

Personally appeared before me, John Rolston, a notary public, duly commissioned and qualified in and for said county, the above named Lewis Sewell, one of the subscribing witnesses to the foregoing deed, who first being duly sworn, deposeth and saith, that he saw the above named Thomas Price, whose name is subscribed thereto, sign, seal, and deliver the same to the said William E. Kennedy; that he, this deponent, subscribed his name as a witness thereto in the presence of the said Thomas Price, and that he saw the other subscribing witness, Leon Nicholas, sign the same in presence of the said Thomas Price, and in the presence of each other, on the day and year therein named.

LEWIS SEWELL.

Subscribed and sworn to before me, this twenty-ninth day of September, in the year of our Lord one thousand eight hundred and thirty-six.

JOHN ROLSTON, *Notary Public.*

Given under my hand and notary seal this twenty-ninth day of September, A. D. eighteen hundred and thirty-six.

JOHN ROLSTON, [L. S.]
Notary Public.

B, p. 8.—F.

Know all men by these presents that I, Thomas Price, of Mobile and Mississippi Territory, do, by these presents, bind myself, my heirs, executors, administrators, and assigns, in consideration of the sum of five hundred dollars, to me in hand paid by W. E. Kennedy, of the said territory, the receipt of which I do hereby acknowledge, have remised, released, and forever quit claim, and do by these presents remise and release, and forever quit claim, unto the said Wm. E. Kennedy, his heirs, administrators, and assigns, forever, to all that tract of land granted to me [by] Governor Manuel Gayoso de Lemos, of the 18th of Nov., 1798, of five hundred and forty acres, situated in the vicinity or suburbs of Mobile, (except two acres on the southeast boundary of said tract, adjoining Tensas line, which I reserve for myself and heirs,) bounded on the south by the said Tensas limits, and *their of May* run on the east by the town of Mobile, on the south by lands claimed by Simon Andre and Favre; to have and to hold the same, together with all their privileges and appurtenances thereto belonging, to him, the said Wm. E. Kennedy, his heirs, executors, administrators, and assigns, forever.

In witness whereof I have hereto set my hand, and affixed my seal, this 25th day of August, in the year of our Lord one thousand eight hundred and thirteen.

(Signed) THOMAS PRICE.

Signed, sealed, and delivered in the presence of us, the day and year last above written—

THOMAS POWELL,
FRANCIS GERARD,
MICHAEL MCKINNEY.

Proven in open court by Francis Gerard.

A. HANNA, *Clerk.*

20*th Oct.*, 1813.

3 and 212.—G.

Know all men by these presents that I, Thomas Price, of West Florida, do bind myself, heirs, and assigns, in consideration of the sum of two hundred dollars, to me in hand paid by William E. Kennedy, of said province, and the receipt whereof I do hereby acknowledge, have remised, released, and forever quit claim, and do, by these presents, remise, release, and forever quit claim, unto the said William E. *E.* Kennedy, his heirs and assigns, forever, all that tract or concession of land granted to me by the intendant decree of the eighteenth September, eighteen hundred and six, for about five hundred acres of land in the vicinity or western suburbs of Mobile, (except ten acres in the northeast corner of said survey, which I reserve for myself;) to have and to hold the same, together with all the privileges and appurtenances thereto belonging, to him, the said William E. *E.* Kennedy, his heirs and assigns, forever.

In witness whereof I have hereunto set my hand, and affixed my seal, on the 22d of November, 1806.

THOMAS PRICE. [L. S.]

Signed, sealed, in the presence of us, witnesses—

BENJ. DUBROCOA,
ZENO ORSO.

Recorded, page 38.

G. SALTONSTALL, *Clerk.*

THE STATE OF ALABAMA, *Mobile county:*

Personally appeared before me, Henry Lewis, clerk of the county court of said county, Miguel D. Eslava, who, being duly sworn, says, that he is acquainted with the *the* handwriting of Benjamin Dubrocoa and Zeno Orso, the subscribing witnesses to the foregoing deed; that he has seen them write; and that the foregoing deed is subscribed by same witnesses in their own proper handwriting; and that same witnesses are both dead. He further swears that he is acquainted with the handwriting of Thomas Price, the grantor in said deed made; that he

has seen him write; that said deed is subscribed by said Thomas Price in his own proper handwriting; and that said Thomas Price is also dead.

Subscribed and sworn to this twenty-eighth day of July, 1836.

M. D. ESLAVA.

Witness my hand and seal the day and year aforesaid.

H. LEWIS. [L. S.]

Received in office March 18, 1820.

H.

STATE OF ALABAMA, *Mobile county:*

For value received of Joshua Kennedy, I assign, bargain, and sell the within mentioned tract of land, which was purchased by me of Thomas and Theophilus Powell, to the said Joshua Kennedy, his heirs and assigns, forever.

In witness of which I hereto set my hand and seal, in the town of Mobile, this nineteenth day of March, one thousand eight hundred and twenty.

W. E. KENNEDY.

In presence of—
C. NICHOLAS,
JOSEPH SNOELL.

I.

STATE OF ALABAMA, *Mobile county:*

Know all men by these presents that I, William E. Kennedy, for the consideration of the sum of two thousand dollars, to me in hand paid by Joshua Kennedy, (of Tensaw,) the receipt of which I do hereby acknowledge, have bargained, sold, aliened, and confirmed, and I do, by these presents, bargain, sell, deed, and confirm, to the said Joshua Kennedy, his heirs and assigns, forever, all these following described lots, pieces, or parcels of land, viz: All these two lots, situated, lying, and being in the town of Mobile, at the northwest intersection of Dauphin and Hamilton streets, containing fifty-five feet front on the north side of Dauphin street, and extending back northwardly one hundred and ten feet, bounded on the south side by Dauphin street, on the east side by Hamilton street, and on all other sides by lots belonging to the said William E. Kennedy; and also all these squares, pieces, or parcels of lands, situated, lying, and being in the town of Mobile, bounded on the north side by Dauphin street, on the east side by Jackson street, on the south side by Government street, and on the west side by Franklin street, beginning at the southwest intersection of Dauphin and Jackson streets; then running along the west side of Jackson street, six hundred and seventy-nine feet, to Government street; then westwardly along the north side of Government street, four hundred and ninety-seven feet, to Franklin street; then northwardly along the east side of Franklin street, six hundred and twenty-nine feet, to Dauphin street; then eastwardly along the south side of Dauphin street, four hundred and ninety-seven feet, to the beginning corner. And also that lot, piece, or parcel of

ground situated in the town of Mobile, bounded on the south side by St. Francis street, on the west side by a lot formerly occupied by Bazal, on the east side by the river Mobile, on the north by vacant lots granted to me by the Spanish government the 26th day of September, 1806, and the grant for the same, recorded in the land office, in the book D, 27, 28, 29, 30, and 31; and also all that square of lots, piece, or parcel of land in the town of Mobile, bounded north by Government street, east by Jackson street, south by Charlotte street, north by Hamilton street or Bodo Adams' lots, and being that square of lots that lies between John Jolanson and Bodo Adams' lots; to have and to hold the same lots, pieces, or parcels of lands and premises, with all and singular the rights, titles, members, and appurtenances thereunto belonging, or in anywise appertaining, unto him, the said Jos. Kennedy, his heirs and assigns, forever.

In testimony of which I have hereunto set my hand and seal this 27th day of March, 1820.

WILLIAM E. KENNEDY.

In presence of—
DEOZOR MCVOY.

Received in office 29th March, A. D. 1820, book O, pp. 270, 271, and 272.

STATE OF ALABAMA, *Mobile county:*

Be it remembered, that, on the twenty-eighth day of March, in the year of our Lord eighteen hundred and twenty, personally appeared before me, Henry V. Chamberlain, esq., a justice of the quorum for said county, William E. Kennedy, whose name is subscribed to the foregoing instrument in writing, who acknowledged that he signed, sealed, and delivered the same for the uses and purposes therein expressed.

In witness whereof I have hereunto set my hand and seal the day and year aforesaid.

HENRY V. CHAMBERLAIN, [L. S.]
Jus. quo.

STATE OF ALABAMA, *Mobile county:*

Know all men by these presents that I, Joshua Kennedy, for the consideration of the sum of five hundred and eighty dollars, to me in hand paid by Samuel Kitchens, at or before the signing of this deed, and in consideration of the further sum of eight hundred dollars, to me *to* secured to be paid by his promissory note of this date, with interest from the date, payable six months after the title shall have been confirmed by the United States, all of that lot or parcel of ground granted to me by the intendant, Morales, dated Pensacola, the twenty-fourth day of July, one thousand eight hundred and six, situate, lying, and being in the town of Mobile, having a front of one hundred and twenty feet on Royal street, and extending back eastwardly six hundred feet to the Mobile river, bounded on the east side by Mobile river, on the south side by St. Francis, on Dauphin street, on the west side by Royal street, and on the north by vacant *livest* at the time of the grant;

and having such shape, form, and marks, as will more fully appear by reference to the grant and warrant of survey of the same from the Spanish government to me, the said Joshua Kennedy; to have and to hold the same, together with all and singular the privileges and appurtenances thereunto belonging, unto him, the said Samuel Kitchens, his heirs and assigns, forever.

In testimony of which I have hereunto set my hand and seal this 22d day of January, one thousand eight hundred and twenty.

JOSHUA KENNEDY. [L. S.]

Signed, sealed, and delivered in presence of—
DANIEL PAUL,
DANIEL G. HODGUNS.

Received in office 25th Feb'y, A. D. 1820.

THE STATE OF ALABAMA, *Mobile county:*

Personally appeared before me, Hugh H. Rolson, clerk of the inferior court for said county, the above named Joshua Kennedy, who acknowledged, and delivered, and sealed the foregoing deed, on the day and year therein mentioned, to the aforesaid Samuel Kitchens.

Given under my hand and seal this twenty-fifth day of Feb'y, A. D. 1820.

HUGH H. ROLSON. [L. S.]

Book C, pp. 211 and 212.

(For plat, see original, p. 527.)

Plano de una terreno que se halla vacante.

SENOR COMANDANTE: Dn. Jose Collins, capit'n de drago's del rio Pescado, con el mayor respecto a S. M. expone que se halla vacante una tierra conteniendo treinta dos perchas á la calle Real, lindado por el norte con la havitacion de SS. Panton, Leslie y Co., con el sur con la calle Sn. Luis, por el este con el rio de la Movila, y siendo tierra pantonosa, por el cual no ha sido pedida.

T. AMASA, *P. M.*

Suplica se sirva concederle la pedida con la profundidad hasta el rio, segun manifiesta el plano antecedente. En Movila tres de Enero mil ochocientos y tres.

JOSE COLLINS.

Dn. Joaq'n de Osorno, cap'n del reg'ts de infanteria de la Luisiana, comandante militar y politico de la plaza de la Movila y su jurisdicion, y subdelegado del intendente general de estas provincias.

Desde a fallecimiento del senor assesor de la intend'a Dn. Manuel Sorrano se ha mandado suspender todo lo relativo á peticiones de tierras, por lo cual por la presente concedo licencia al cap'n de drag's de los milicias del rio Pescado Dn. Jose Collins, agrimensor particular de esta

plaza, para qe. sin impedimento alguno pueda establecerse en la tierra qe. manifiesta el plano de la vuelta, siempre que no cause perjuicio á persona alguna, y qe. se han tierras vacantes, con obligacion qe. luego qe. llegue á estas prov'as el sucesor del difunto asesor, el presentar segun esta mandado los documentos necessarios para qe. se han remitidos al Sor. intendente genl. de estas prov'as y le provehan del titulo debido. Movila, 26 de Abl., de 1803.

Registrado. JOQ'N DE OSORNO.

Do.

M.

Sepan quantos esta carta vieren, como yo, James Bready, de este vecindario, otorgo realmente y con efecto, que vendo á Tomas Prayz, interprete de la lengua Inglesa en esta plaza, una cavana sobre un terreno de sesenta pies de frenta y la profundidad ordinaria de ciento y veinte, situado en la calle de San Carlos lindando por la parte del norte annor. vacante, y por la del sur á otro de Dn. Gabriel Tixeran el hijo, el mismo que me pertenece por concesion que me hizo de el el señor governador militar de estas provincias como consta del documento original que existe en los archivos de esta plaza; y se lo vendo al antedicho, libre de hipotecas, y de todo otro gravamen, en el precio de ciento y cinquenta pesos fuertes, qe. me ha satisfecho de contado, y pornoser de presente la entrega, renuncio la prueva leyes de la entrega, y las de la non numerata pecunia, dolo y dernas del caso, y otorgo formal recivo; mediante loqual me aparto y separo del derecho de propriedad, util, dominio, y senorio que á dicha cavana y terreno havia y tenia, y todo lo cedo, renuncio, y traspaso en el comprador con quien su causa y derecho hubiere, y representare, para que como suya propria la posea, venda, cambeo ô enagene á su voluntad, en virtud de esta escritura que a su favor otorga, sin que necesite de otra prueva de que le relevo y me obligo al saneamiento de esta venta, en bastante forma de derecho, y como mas convenga en favor del comprador, con mis vienes y rentas havidos y honor compoderio y sumision á las justicias de S. M. para que me obliguen a su cumplimiento; y estando presente al otorgamiento de esta escritura. Yo, el memorado Tomas Prayz, la otorgo á mi favor, y por ella recivo comprada dicha cavana y terreno en el precio y conformidad en que me ha vendida de ella me doy por entregado á mi voluntad, y otorgo formal recivo. En cuio testimonio es fecha esta escritura en la plaza de la Movila, á veinte y siete dias del mes de Noviembre, de un mil y ochocientos años. Yo, Dn. Manuel de Lanzos, capitan de infanteria retirado, comandante militar y politico de la citada plaza, acompañado con dos testigos de asistencia por falta de escrivano, conosco a los otorgantes que lo firmaron con los mencionados testigos de que yo el memorado comandante doy fé.

For James Bready, THOS. PRICE,

Thomas Powell,

F'co. Hemeterio, FR'O. SALVADOR GOMES,

Havia, ante me, MANUEL DE LANZOS.

N.

Know all men by these presents, that I, William E. Kennedy, of Mobile county, in the Alabama Territory of the United States, for and in consideration of the sum of two hundred dollars, to me in hand paid, at and before the ensealing and delivery of these presents, by John Forbes & Co., of Mobile, the receipt whereof is hereby acknowledged, have bargained and sold, and by these presents do grant, bargain, and sell, to the said John Forbes & Co., their heirs and assigns, all the right, title, claim, interest and property, that I now have, or hereafter may have had, in and to a certain lot or parcel of land situated, lying, and being in the town of Mobile, bounded on the south by a street running from Royal street, in front of the dwelling premises of the said John Forbes & Co. to the river side, on the east by the river Mobile, on the north by lot belonging to James Innerarity, and on the west by lots belonging to Michael Peraitt, the mulatto family of Simon Andre, and a lot of the same John Forbes & Co. and others, together with the improvements and appurtenances therein or thereto belonging, or in anywise appertaining. To have and to hold the said lot or parcel of land above mentioned, with the improvements and appurtenances thereon or thereunto belonging, unto the said John Forbes & Co., their heirs and assigns, to their only proper use and behoof forever. And the said William E. Kennedy the said lot or parcel of land, with the buildings and appurtenances, and every part thereof, unto the said John Forbes & Co., their heirs and assigns, against heirs of his heirs and assigns, and against every other person or persons, lawfully claiming or to claim under him, them, or any of them, shall and will warrant and forever defend by these presents.

In witness whereof he hath hereunto set his hand at Mobile, this 20th day of February, 1818. W. E. KENNEDY. [SEAL.]

Signed, sealed, and delivered in presence of—
B. DUBROCA,
HELAM DUBROCA,
ELAM KRIBBS.

MOBILE COUNTY, *Alabama Territory*.

Before me, Benjamin Dubroca, a justice of the quorum in and for said county, duly commissioned, personally appeared the above signed W. E. Kennedy, who declared the aforegoing instrument of writing to be his voluntary act and deed, given for the considerations and purposes therein mentioned.

Witness my hand and seal the day and date above written.

B. DUBROCOA, *J. Q.* [SEAL.]

THE STATE OF ALABAMA, *Mobile county:*

I, Drury Thompson, clerk of the county court of said county, certify, that the foregoing is a transcript of the record of a deed from William E. Kennedy to John Forbes & Co., as recorded in my office in book B, page 55.

Given under my hand and seal of office, this twenty-seventh day of March, A. D. 1845.

O.

To all people to whom these presents shall come, I, Addin Lewis, mayor of the city of Mobile, send greeting: Whereas, by an act of the General Assembly of the State of Alabama, entitled an act to incorporate the city of Mobile, passed the seventeenth day of December, in the year of our Lord one thousand eight hundred and nineteen, the mayor and aldermen of the city of Mobile, by the ninth section of the above recited act, are empowered to lay taxes on both personal and real estate within the city; and whereas, the mayor and aldermen of said city, in pursuance to the power in them so vested, and in conformity to the provisions of the said section of the said act, did, on the twenty-eighth day of March, in the year of our Lord one thousand eight hundred and twenty, lay taxes on the real estate within said city, and the taxes so laid on a lot or parcel of marsh land, as the property of the heirs of Joseph Collins, deceased, situate in the city of Mobile, at the corner of Royal street and St. Louis street, and running thirty-two perches on St. Louis street and bounded on the north by a plantation formerly belonging to Pailon Fisher & Co., but now belonging to John Forbes & Co., called Poplar Grove, on the southerly by St. Louis street aforesaid, on the east by Mobile river, and the west by Royal street aforesaid, containing about according to the map thereof on record in the land office, not having been paid by said heirs, nor by any person for them, to the collector of the said city, within ten days after the delivery of the tax list to said collector as requested by law, and a descriptive list of said real estate, together with the names of the owners thereof, as well as with the valuation of the said real estate, together with the tax assessed thereon, having been published for the space of two months in the Mobile Gazette and General Advertiser, printed within the limits of the city of Mobile; and the said tax, at the expiration of the said two months, running still unpaid, and the same being thereupon returned by the said collector to the clerk of the corporation, and the mayor of the said corporation having given public notice for the space of one month, by publication in the Mobile Gazette and General Advertiser, printed within the limits of the city of Mobile, that the said real estate, or so much thereof as would be necessary to satisfy the taxes so remaining unpaid, would be sold at public auction on the tenth day of January, in the year of our Lord one thousand eight hundred and twenty-one, to the highest bidder, to satisfy the said taxes; and whereas, on the said tenth day of January, in the year aforesaid, agreeably to said notice, the said real estate was set up at public auction, in the city of Mobile, at the house where the corporation of said city holds its meeting, and was sold to William H. Robertson and William Barnwell for the sum of sixty-five dollars, which was the sum bid therefor at the said sale; now, know ye, that pursuant to the power and authority in me vested by the said ninth section of the said recited act, and not otherwise, and in consideration of the said sum of the said sixty-five dollars, inclusive of the sum of eight dollars, which was the amount of the taxes assessed and due thereon, paid by the said William H. Robertson and William Barnwell, the receipt whereof is hereby acknowledged, I, Addin Lewis,

mayor of the said city of Mobile, do hereby grant, bargain, sell, and convey, unto the said William H. Robertson and William Barnwell, their heirs and assigns, the same lot or parcel of marshy ground herein before particularly described, bounded on the north by a plantation or tract of land belonging to John Forbes & Co., called Poplar Grove, on the south by *stone* St. Louis street, on the east by Mobile river, and west by Royal street; containing, by calculation made, according to the map thereof on record in the land office, together with all the privileges and appurtenances thereto belonging, or in any wise appertaining; to have or to hold the same lot or parcel of land, with all and singular the privileges and appurtenances thereof, to the said William H. Robertson and William Barnwell, their heirs and assigns, to their use and behoof forever.

In testimony whereof I have hereunto set my hand, as mayor of the city, aforesaid, and affixed the seal of the corporation of said city, this thirteenth day of April, in the year of our Lord one thousand eight hundred and twenty-one.

ADDIN LEWIS, *Mayor.*

Signed, sealed, and delivered in presence of—

STATE OF ALABAMA, *Mobile county:*

Personally appeared before me, Edward Hall, one of the justices of the quorum for the county aforesaid, Addin Lewis, esq., mayor of the city of Mobile, in the county aforesaid, who acknowledged that he did sign, seal, and deliver the foregoing deed to therein mentioned William H. Robertson and William Barnwell, on the day and year therein mentioned. Given under my hand and seal at the city of Mobile, this 30th day of April, in the year 1821.

EDWARD HALL, *J. C. C.* [L. S.]

STATE OF ALABAMA, *Mobile county:*

I, Drury Thomson, clerk of the county court of said county, certify, that the foregoing is a transcript of the record of a deed from Addin Lewis, mayor, to W. H. Robertson and Wm. Barnwell, as recorded in my office, in book D, pages 331, 332, 333. Given under my hand and seal of office, this twenty-seventh day of March, A. D. 1840.

Interrogatories to be submitted to John P. Rinny, David Jones, and Samuel Penny, and to each of them, on the part of the plaintiff, in a cause in the circuit court of the U. S., in which Sidney E. Collins is plaintiff, and Wm. R. Hallett and Robert L. Walker, executors of the last will and testament of Joshua Kennedy, deceased, and others, are defendants.

1. Have you the care of, or access to, the tax assessments of property in this city belonging to the corporation from 1820 till this time, or to any of the books; if you attach to your answers the assessments that have been made and returned, of the assessments of the property between St. Louis street, the Orange Grove line, Royal street, and the river.

O.

To all people to whom these presents shall come, I, Addin Lewis, mayor of the city of Mobile, send greeting: Whereas, by an act of the General Assembly of the State of Alabama, entitled an act to incorporate the city of Mobile, passed the seventeenth day of December, in the year of our Lord one thousand eight hundred and nineteen, the mayor and aldermen of the city of Mobile, by the ninth section of the above recited act, are empowered to lay taxes on both personal and real estate within the city; and whereas, the mayor and aldermen of said city, in pursuance to the power in them so vested, and in conformity to the provisions of the said section of the said act, did, on the twenty-eighth day of March, in the year of our Lord one thousand eight hundred and twenty, lay taxes on the real estate within said city, and the taxes so laid on a lot or parcel of marsh land, as the property of the heirs of Joseph Collins, deceased, situate in the city of Mobile, at the corner of Royal street and St. Louis street, and running thirty-two perches on St. Louis street and bounded on the north by a plantation formerly belonging to Pailon Fisher & Co., but now belonging to John Forbes & Co., called Poplar Grove, on the southerly by St. Louis street aforesaid, on the east by Mobile river, and the west by Royal street aforesaid, containing about according to the map thereof on record in the land office, not having been paid by said heirs, nor by any person for them, to the collector of the said city, within ten days after the delivery of the tax list to said collector as requested by law, and a descriptive list of said real estate, together with the names of the owners thereof, as well as with the valuation of the said real estate, together with the tax assessed thereon, having been published for the space of two months in the Mobile Gazette and General Advertiser, printed within the limits of the city of Mobile; and the said tax, at the expiration of the said two months, running still unpaid, and the same being thereupon returned by the said collector to the clerk of the corporation, and the mayor of the said corporation having given public notice for the space of one month, by publication in the Mobile Gazette and General Advertiser, printed within the limits of the city of Mobile, that the said real estate, or so much thereof as would be necessary to satisfy the taxes so remaining unpaid, would be sold at public auction on the tenth day of January, in the year of our Lord one thousand eight hundred and twenty-one, to the highest bidder, to satisfy the said taxes; and whereas, on the said tenth day of January, in the year aforesaid, agreeably to said notice, the said real estate was set up at public auction, in the city of Mobile, at the house where the corporation of said city holds its meeting, and was sold to William H. Robertson and William Barnwell for the sum of sixty-five dollars, which was the sum bid therefor at the said sale; now, know ye, that pursuant to the power and authority in me vested by the said ninth section of the said recited act, and not otherwise, and in consideration of the said sum of the said sixty-five dollars, inclusive of the sum of eight dollars, which was the amount of the taxes assessed and due thereon, paid by the said William H. Robertson and William Barnwell, the receipt whereof is hereby acknowledged, I, Addin Lewis,

629.

mayor of the said city of Mobile, do hereby grant, bargain, sell, and convey, unto the said William H. Robertson and William Barnwell, their heirs and assigns, the same lot or parcel of marshy ground herein before particularly described, bounded on the north by a plantation or tract of land belonging to John Forbes & Co., called Poplar Grove, on the south by *stone* St. Louis street, on the east by Mobile river, and west by Royal street; containing, by calculation made, according to the map thereof on record in the land office, together with all the privileges and appurtenances thereto belonging, or in any wise appertaining; to have or to hold the same lot or parcel of land, with all and singular the privileges and appurtenances thereof, to the said William H. Robertson and William Barnwell, their heirs and assigns, to their use and behoof forever.

In testimony whereof I have hereunto set my hand, as mayor of the city, aforesaid, and affixed the seal of the corporation of said city, this thirteenth day of April, in the year of our Lord one thousand eight hundred and twenty-one.

ADDIN LEWIS, *Mayor.*

Signed, sealed, and delivered in presence of—

STATE OF ALABAMA, *Mobile county:*

Personally appeared before me, Edward Hall, one of the justices of the quorum for the county aforesaid, Addin Lewis, esq., mayor of the city of Mobile, in the county aforesaid, who acknowledged that he did sign, seal, and deliver the foregoing deed to therein mentioned William H. Robertson and William Barnwell, on the day and year therein mentioned. Given under my hand and seal at the city of Mobile, this 30th day of April, in the year 1821.

EDWARD HALL, *J. C. C.* [L. S.]

STATE OF ALABAMA, *Mobile county:*

I, Drury Thomson, clerk of the county court of said county, certify, that the foregoing is a transcript of the record of a deed from Addin Lewis, mayor, to W. H. Robertson and Wm. Barnwell, as recorded in my office, in book D, pages 331, 332, 333. Given under my hand and seal of office, this twenty-seventh day of March, A. D. 1840.

Interrogatories to be submitted to John P. Rinny, David Jones, and Samuel Penny, and to each of them, on the part of the plaintiff, in a cause in the circuit court of the U. S., in which Sidney E. Collins is plaintiff, and Wm. R. Hallett and Robert L. Walker, executors of the last will and testament of Joshua Kennedy, deceased, and others, are defendants.

1. Have you the care of, or access to, the tax assessments of property in this city belonging to the corporation from 1820 till this time, or to any of the books; if you attach to your answers the assessments that have been made and returned, of the assessments of the property between St. Louis street, the Orange Grove line, Royal street, and the river.

2. If any proceeds of this property have been separately assessed, attach a copy from the books, and specify the dates of the assessments.

3. If any of the assessments of the books are lost or inaccessible, please state which; if the assessments of the squares or lots have not been separately made in any year, state which. Answer fully and particularly, so as to enable us to ascertain what is contained on those books regarding the value of this property, or any part of it.

CAMPBELL & CHANDLER.
For Plaintiff.

Cross interrogatories to be submitted to the foregoing witnesses on the part of the defendants in said suit.

1. Are the books of assessments, from which you have made copies or extracts, books that have been constantly in the appropriate office of the corporation for their custody, or have any part of these books been out of said office; if so, which are they, and when were they returned, or when and where were they found?

2. Have you access to the custody of the records of the corporation of Mobile; if yea, attach to your answer a copy from said records of the appointment of assessors for the city of Mobile for 1831.

3. State whether, up to and in 1826, the property east of Royal street, and between St. Louis and St. Anthony streets, was assessed constantly to Samuel Kitchen, so far as appears from said books of assessments.

4. What was the whole valuation of the real estate of the city of Mobile, made and returned by the assessments in the year 1829, and also in the year 1830; what was the whole valuation by said assessments in cash, of those years, of so much of the city property as lay south of St. Louis street?

5. What is the valuation of the whole of the real property in the city of Mobile, as made and returned on the assessments of the present year, (1845;) what is the whole valuation by the assessments returned for the year, (1845,) of that part of the real estate of the city lying north of St. Louis street?

6. What is the valuation by the city assessments, made and returned for the present year, (1845,) of so much of the real property of the city of Mobile as lies north of St. Louis street and east of Royal street?

STEWART & EASTON,
Sols. for Defendants.

The witness, Samuel Penny, produced and sworn in behalf of the complainant, in answer to the first interrogatory, says: He has the care of the books of assessments of property in the city of Mobile; and attached hereto, marked A, is a copy of the assessments that have been made from 1820 to 1845, of the property between St. Louis street, the Orange Grove, Royal street, and the river.

To 2nd interrogatory he says: The exhibit marked A, hereto attached, exhibits the assessments of this property as distinctly, and as accurately and minutely, as he is able to make it.

To the 3d interrogatory he says: The assessment books for 1828 and

1831 are to be found; the copy of assessments hereto attached is a correct copy of the assessments and of the description of the property as found in the assessment books.

Cross interrogatories.

To 1st he answers: The assessment books for 1830 to 1833 he found about 10 days ago at the office of the county clerk for this county; how long they had been there he did not know; all the others, to the best of his knowledge, have remained in his office, to wit, that of clerk of the corporation of Mobile.

To 2nd. He has the custody of the city records, and exhibit B is a copy of the appointment of assessors for 1831.

To 3d. He says the exhibit A is a copy of the assessment, and shows to whom the property was assessed, and answers this interrogatory as fully as it can be answered.

To the 4th. In 1829 the whole valuation of the real estate of the city was $1,891,760 (°); in 1830 it was $2,162,770 (°); no answer to the remainder of this question can be given without sifting, and examining, and dividing the whole books of assessments for those years; the property of the city is not assessed by districts, but arranged alphabetically according to name of property holders, and the answer would be in fact a reassessment of all the city property, and would take from 3 weeks to a month to make out; and the witness has not had time, in connection with his other duties, to perform it; so he says he cannot answer.

To 5th he says: The valuation for real estate in the city for this year (1855) is $12,622,085 (°); to the latter part of this question the witness makes answer as above in answer to 4th interrogatory; this portion of the city consists of 1st ward and about ½ 7th ward; the assessments of 1st ward is $2,307,050 (°), and 7th ward $966,910 (°).

To 6th. He makes pretty much the same answer as he has to the 4th and 5th answers; the first ward consists of that portion of the city north of St. Louis street and east of Franklin street, and is assessed at $2,307,050 (°).

SAMUEL PENNY.

Sworn to and subscribed before me, this 25th April, 1845.

P. HAMILTON, *Com'r.*

John P. Remy and David Jones, being duly sworn, say, they have not the custody of the assessment books of the city, and cannot make answers to any of the interrogatories propounded, but that Samuel Penny is the clerk of the corporation, and is the proper custodian of these books.

JOHN P. REMY.
D. JONES.

Sworn to and subscribed before me, this 25th April, 1845.

This indenture, made the twelfth day of March, in the year of our Lord one thousand eight hundred and thirty-three, between Adolph Batre and Charles Batre, by Adolphus Batre, his attorney in fact, all

of the city of Mobile, in the State of Alabama, of the first part, and William F. Cleveland, of the same place, of the second part, witnesseth: That the said parties of the first part, for and in consideration of the sum of five thousand and five hundred dollars, of lawful money of the United States of America, [to] them in hand paid by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, and the said party of the second part, his heirs, executors, and administrators, forever released and discharged from the same by these presents, have granted, bargained, sold, aliened, remised, released, enfeoffed, conveyed, and confirmed, and by these presents do grant, bargain, sell, alien, remise, release, enfeoff, convey, and confirm, unto the said party of the second part, his heirs and assigns forever, all those certain lots, pieces, parcels of land, situate, lying, and being in the city of Mobile, county of Mobile, and State of Alabama, described as follows, to wit: a certain lot, piece, or parcel of land, situate, lying, and being in the city of Mobile aforesaid, bounded on the east by Water street, on the north by lands now or lately belonging to Joshua Kennedy, on the west by lands of the same, and on the west by lands now or lately belonging to Jacques Chighizola, having fifty feet in front on Water street aforesaid, with the same number of feet in width in the rear, and running back from Water street, eastwardly, in depth one hundred feet; also a certain other lot, piece, or parcel of land, situate, lying, and being in the said city of Mobile, bounded on the north by lands now or lately belonging to Jacques Chighizola, on the east by Mobile river, on the south by St. Anthony street, and on the west by Water street, having fifty feet in front on Water street, and running thence, eastwardly, in depth to the channel of the Mobile river, according as the same is marked and laid down on the diagram of survey hereto annexed; together with all and singular the tenements, hereditaments, rights, members, privileges, and appurtenances unto the above mentioned and described premises belonging or in anywise appertaining. To have and to hold the above granted and described premises, with the appurtenances, unto the said party of the second part, his heirs and assigns, to the sole and only proper use, benefit, and behoof of the said party of the second part, his heirs and assigns, forever; and the said Adolphus Batre and Charles Batre, for themselves and their heirs, the above described and hereby granted and released premises, and every part and parcel thereof, with the hereditaments and appurtenances, unto the said party of the second part, his heirs and assigns, against the said parties of the first part, and their heirs, and against all and every person and persons whomsoever, lawfully claiming or to claim the same, shall and will warrant, and by these presents forever defend; and Jane Batre, the wife of the said Adolphus Batre, and Adielle Batre, the wife of the said Charles Batre, in consideration of the sum of ten cents to each of them in hand paid, respectively, the receipt whereof they doth hereby acknowledge, do hereby release and relinquish to the said William F. Cleveland, and to his heirs and assigns

forever, all their and each of their rights and title of dower in and to the above mentioned and described premises.

In witness whereof the said Adolphe Batre hath hereunto set his hand and seal, and hath also hereunto set the hand and seal of the said Charles Batre, being hereunto duly authorized by him, by letter of attorney made and executed by him at the city of Mobile, on the ninth day of June, in the year of our Lord one thousand eight hundred and thirty-two, and acknowledged before John A. Stewart, esqr., one of the notary publics in and for the city and county of Mobile, reference being had to the original letter of attorney, will more fully appear. And the said Jane, the wife of the said Adolphus Batre, and the said Adielle, the wife of the said Charles Batre, have hereunto set their hands and seals, respectively, at the city and county of Mobile aforesaid, on the day and year first herein before written.

A. BATRE, [SEAL.]
CHAS. BATRE, [SEAL.]
By his attorney, A. Batre.
JANE BATRE, [SEAL.[
ADELI BATRE. [SEAL.]

Signed, sealed, and delivered in presence of—
Teste: RICH'D H. REDWOOD,
JOHN A. STEWART.

THE STATE OF ALABAMA, *city and county of Mobile:*

Be it remembered that, on the day of the date hereof, before me, John A. Stewart, a notary public for said county, by legal authority duly admitted, qualified, and sworn, personally appeared Adolphus Batre, and acknowledged that he signed, sealed, and delivered the foregoing deed, as well for himself as for Charles Batre, (whose legally authorized attorney for that purpose he represents himself to be,) to William F. Cleveland, on the day and year and for the uses and purposes therein named; and also appeared personally before me, the said notary, Jane Batre, wife of the said Adolphus Batre, and Adelle Batre, wife of the said Charles Batre, and severally acknowledged that they signed, sealed, and delivered the said deed to the said William F. Cleveland, on the day and year and for the uses and purposes therein named. And the said Jane and the said Adelle being by me examined privately and apart from their said husbands, acknowledge that they signed, sealed, and delivered the said deed freely, and without any fear, threats, or compulsion from their said husbands. Witness my hand and seal notarial, the 12th day of March, A. D. 1833.

JNO. A. STEWART, *Notary Public.* [SEAL.]

[For plat see original, page 543.]

THE STATE OF ALABAMA, *Mobile county:*

I, Drury Thompson, clerk of the county court *court* of Mobile county [and] State aforesaid, do hereby certify, that the foregoing two pages of this sheet contains a true and correct transcript of the record of a deed and the plat or survey annexed thereto, from Adolphus and Charles Batre to William F. Cleveland, as the same remains of record in my office, in book K, pages 554 and 555.

In testimony whereof I have hereto affixed my name and the seal of my office, at office, this the fifth day of March, A. D. 1845.

D. THOMPSON, *Clerk.*

(A—*referred to in Penny's testimony.*)

1823.	The description of property very indefinite.	
	And Collins. 7 vacant lots, fronting Royal and Water	$5,000
	Collins. Marsh on river	2,000
	The assessment is indefinite.	
1824.	Vacant lot, Water street, to Kitchen.....$1,500	1,500
1825.	Kitchen Vacant lots, marsh	12,000
"	Joshua Kennedy. Vacant lots, north city	10,000
"	Do. do. House and lot, St. Louis street	3,000
1826.	Kitchen. Marsh lots	10,000
"	Joshua Kennedy. House and lot, St. Louis	1,500
1827.	Samuel Kitchen. Lot, buildings, and wharf, north St. Louis, and east of Royal street	15,000
"	Wm. E. Kennedy. Vacant lots, east Royal, running to river Mobile	5,000
1828.	The book of this year not found.	
1829.	Joshua Kennedy. House and lots, between Royal and St. Louis, St. Anthony and Water streets	10,000
"	Water lots and wharf, east of Water street, north of St. Louis street.	8,000
"	Vacant lots east Royal, between St. Anthony and Forbes's land	6,000
"	J. Krebbs. Vacant lots east Water, north of Kennedy's wharf	500
1830.	Samuel Kitchen. Lots Royal to channel	12,000
"	Joshua Kennedy. Vacant lots west of Water, (Tombeckbee Bank).	3,000
"	Lands between Orange Grove and city	5,000
"	Vacant lots, northward, Price	3,500
"	Wharf and lands	18,000
1831.	The book of this year not found.	
1832.	Joshua Kennedy. Old buildings and lots and wharf, north of St. Louis street, from Royal street to channel, square 192	40,000
1833.	Joshua Kennedy. Frame house and land, north of St. Louis street to Orange Grove line, east of Royal street to the river, including wharves	45,000
1834.	Campbell & Cleveland. Indian wharf and lot, 50 feet, north of St. Anthony, and east of Water to the channel; deduction of $5,000 made	25,000
"	Campbell & Cleveland. Unfinished store and lots, 225, northwest corner St. Anthony and water, 100 feet square	15,000

A—Continued.

1834.	Joshua Kennedy. Whole square land, bounded by St. Louis, Water, St. Anthony, and Commerce streets.	$50,000
"	Joshua Kennedy. Kennedy's wharf in front thereof.	7,000
"	Joshua Kennedy. Whole square, except 100 feet, bounded by St. Anthony, Royal, Water, and the south line of Orange Grove square 225.	45,000
"	Joshua Kennedy. Whole square and buildings, bounded by St. Louis, Royal, St. Anthony, and Water streets, square 192.	60,000
1835.	Campbell & Cleveland. Brick store and lot, 225, northwest corner of St. Anthony and Water [streets]	17,000
"	Campbell & Cleveland. Indian wharf and lands, north of St. Anthony street, from Water street to the channel, 50 feet	30,000
"	Joshua Kennedy. Whole square 220, bounded by Water, Commerce, St Anthony, and St. Louis [streets]	80,000
"	Joshua Kennedy. Wharf and dock privilege, east of Commerce street, in front of square 220	33,000
"	Joshua Kennedy Brick stores and part of square 192, bounded by Water, St. Louis, Royal, and St. Anthony streets	80,000
"	Joshua Kennedy. Balance of square 225, adjoining Cleveland & Campbell	20,000
1836.	Campbell & Cleveland. Water privileges, east of Commerce street, and north of St. Anthony street, 50 feet front, at $800	40,000
"	Campbell & Cleveland. Wharf erected on the above	2,500
"	Campbell & Cleveland. Vacant lot north of St. Anthony street, extending from Water to Commerce street, 50 feet front, $600	30,000
"	Campbell & Cleveland. Unfinished brick stores and lots, northeast corner of St Louis and Water streets, 100 feet square	50,000
"	Campbell & Cleveland. Brick stores and lot, northwest corner of Water and St. Anthony streets	40,000
"	Joshua Kennedy. Water privilege east of Commerce street, south of Walton, and north of Campbell, &c., 225 feet, at $650	176,250
"	Joshua Kennedy. Wharf erected on the above	5,000
"	Joshua Kennedy. Water privilege east of Commerce, south of St. Anthony, and north of St. Louis streets, 244 feet, at $800	195,200
"	Joshua Kennedy. Wharf erected on the above	500
"	Joshua Kennedy. Vacant water lots east of Water street, extending to Commerce street, 225 feet front, bounded on the north by Walton, on the south by Campbell & Cleveland, at $350 per foot	78,750
"	Joshua Kennedy. Vacant lot south of St. Anthony, extending from Water to Commerce streets, 100 feet on Water, at $600	60,000
"	Joshua Kennedy. Vacant lot northwest corner of Commerce and St. Louis streets, 100 feet square, at $400	40,000
"	Joshua Kennedy. Vacant lot form Royal to Water street, between Barry & Landry, and Campbell & Cleveland	135,000
"	Joshua Kennedy. Vacant lot northeast corner of Royal and St. Anthony streets, 400 feet on St. Anthony [street,] at $125	50,000
"	Joshua Kennedy. Brick store and lot, south of St. Anthony street, from Royal to Water, 100 feet on Royal	105,000
"	Joshua Kennedy. Vacant lot north of St. Louis street, from Royal to Water streets, 100 feet on Water street	80,000
"	Joshua Kennedy. Vacant triangular lot, southeast corner of Royal and State streets, 40 feet front on Royal, at $250	10,000
1837.	Campbell & Cleveland. Water pier and lot, east of Commerce, north of St. Anthony, 100 feet	85,000
"	Campbell & Cleveland. Wharf on the above	2,500
"	Campbell & Cleveland Eight brick stores and lots, northeast corner of St Louis and Water [streets,] and south of Kennedy	100,000

THE STATE OF ALABAMA, *Mobile county:*

I, Drury Thompson, clerk of the county court *court* of Mobile county [and] State aforesaid, do hereby certify, that the foregoing two pages of this sheet contains a true and correct transcript of the record of a deed and the plat or survey annexed thereto, from Adolphus and Charles Batre to William F. Cleveland, as the same remains of record in my office, in book K, pages 554 and 555.

In testimony whereof I have hereto affixed my name and the seal of my office, at office, this the fifth day of March, A. D. 1845.

D. THOMPSON, *Clerk.*

	(A—*referred to in Penny's testimony.*)	
1823.	The description of property very indefinite.	
	And Collins. 7 vacant lots, fronting Royal and Water.....	$5,000
	Collins. Marsh on river.....	2,000
	The assessment is indefinite.	
1824.	Vacant lot, Water street, to Kitchen.....$1,500	1,500
1825.	Kitchen Vacant lots, marsh.....	12,000
"	Joshua Kennedy. Vacant lots, north city.....	10,000
"	Do. do. House and lot, St. Louis street.....	3,000
1826.	Kitchen. Marsh lots.....	10,000
"	Joshua Kennedy. House and lot, St. Louis.....	1,500
1827.	Samuel Kitchen. Lot, buildings, and wharf, north St. Louis, and east of Royal street.....	15,000
"	Wm. E. Kennedy. Vacant lots, east Royal, running to river Mobile	5,000
1828.	The book of this year not found.	
1829.	Joshua Kennedy. House and lots, between Royal and St. Louis, St. Anthony and Water streets.....	10,000
"	Water lots and wharf, east of Water street, north of St. Louis street.	8,000
"	Vacant lots east Royal, between St. Anthony and Forbes's land.....	6,000
"	J. Krebbs. Vacant lots east Water, north of Kennedy's wharf.....	500
1830.	Samuel Kitchen. Lots Royal to channel.....	12,000
"	Joshua Kennedy. Vacant lots west of Water, (Tombeckbee Bank).	3,000
"	Lands between Orange Grove and city.....	5,000
"	Vacant lots, northward, Price.....	3,500
"	Wharf and lands.....	18,000
1831.	The book of this year not found.	
1832.	Joshua Kennedy. Old buildings and lots and wharf, north of St. Louis street, from Royal street to channel, square 192.....	40,000
1833.	Joshua Kennedy. Frame house and land, north of St. Louis street to Orange Grove line, east of Royal street to the river, including wharves.....	45,000
1834.	Campbell & Cleveland. Indian wharf and lot, 50 feet, north of St. Anthony, and east of Water to the channel; deduction of $5,000 made.....	25,000
"	Campbell & Cleveland. Unfinished store and lots, 225, northwest corner St. Anthony and water, 100 feet square.....	15,000

A—Continued.

1834.	Joshua Kennedy. Whole square land, bounded by St. Louis, Water, St. Anthony, and Commerce streets	$50,000
"	Joshua Kennedy. Kennedy's wharf in front thereof	7,000
"	Joshua Kennedy. Whole square, except 100 feet, bounded by St. Anthony, Royal, Water, and the south line of Orange Grove square 225	45,000
"	Joshua Kennedy. Whole square and buildings, bounded by St. Louis, Royal, St. Anthony, and Water streets, square 192	60,000
1835.	Campbell & Cleveland. Brick store and lot, 225, northwest corner of St. Anthony and Water [streets]	17,000
"	Campbell & Cleveland. Indian wharf and lands, north of St. Anthony street, from Water street to the channel, 50 feet	30,000
"	Joshua Kennedy. Whole square 220, bounded by Water, Commerce, St Anthony, and St. Louis [streets]	80,000
"	Joshua Kennedy. Wharf and dock privilege, east of Commerce street, in front of square 220	33,000
"	Joshua Kennedy Brick stores and part of square 192, bounded by Water, St. Louis, Royal, and St. Anthony streets	80,000
"	Joshua Kennedy. Balance of square 225, adjoining Cleveland & Campbell	20,000
1836.	Campbell & Cleveland. Water privileges, east of Commerce street, and north of St. Anthony street, 50 feet front, at $800	40,000
"	Campbell & Cleveland. Wharf erected on the above	2,500
"	Campbell & Cleveland. Vacant lot north of St. Anthony street, extending from Water to Commerce street, 50 feet front, $600	30,000
"	Campbell & Cleveland. Unfinished brick stores and lots, northeast corner of St Louis and Water streets, 100 feet square	50,000
"	Campbell & Cleveland. Brick stores and lot, northwest corner of Water and St. Anthony streets	40,000
"	Joshua Kennedy. Water privilege east of Commerce street, south of Walton, and north of Campbell, &c., 225 feet, at $650	176,250
"	Joshua Kennedy. Wharf erected on the above	5,000
"	Joshua Kennedy. Water privilege east of Commerce, south of St. Anthony, and north of St. Louis streets, 244 feet, at $800	195,200
"	Joshua Kennedy. Wharf erected on the above	500
"	Joshua Kennedy. Vacant water lots east of Water street, extending to Commerce street, 225 feet front, bounded on the north by Walton, on the south by Campbell & Cleveland, at $350 per foot	78,750
"	Joshua Kennedy. Vacant lot south of St. Anthony, extending from Water to Commerce streets, 100 feet on Water, at $600	60,000
"	Joshua Kennedy. Vacant lot northwest corner of Commerce and St. Louis streets, 100 feet square, at $400	40,000
"	Joshua Kennedy. Vacant lot form Royal to Water street, between Barry & Landry, and Campbell & Cleveland	135,000
"	Joshua Kennedy. Vacant lot northeast corner of Royal and St. Anthony streets, 400 feet on St. Anthony [street,] at $125	50,000
"	Joshua Kennedy. Brick store and lot, south of St. Anthony street, from Royal to Water, 100 feet on Royal	105,000
"	Joshua Kennedy. Vacant lot north of St. Louis street, from Royal to Water streets, 100 feet on Water street	80,000
"	Joshua Kennedy. Vacant triangular lot, southeast corner of Royal and State streets, 40 feet front on Royal, at $250	10,000
1837.	Campbell & Cleveland. Water pier and lot, east of Commerce, north of St. Anthony, 100 feet	85,000
"	Campbell & Cleveland. Wharf on the above	2,500
"	Campbell & Cleveland Eight brick stores and lots, northeast corner of St. Louis and Water [streets,] and south of Kennedy	100,000

A—Continued.

1837.	Campbell & Cleveland. Vacant lots north of St. Anthony, from Water to Commerce [street,] 100 feet, at $700	$70,000
"	Campbell & Cleveland. Brick stores and lot, northwest corner of St. Anthony and Water [streets,] 100 feet square	50,000
"	Joshua Kennedy. Water pier, east of Commerce street, south of State street, north of Campbell & Cleveland, 175 feet, at $700	122,500
"	Joshua Kennedy. Wharf on the same	5,500
"	Joshua Kennedy. Water pier east of Commerce street, north of St. Louis street, 244 feet, at $850 per foot	207,400
"	Joshua Kennedy. Wharf on same	2,500
"	Joshua Kennedy. Vacant lot northwest corner of Commerce and St. St. Louis streets, 100 feet square, at $450 per foot	45,000
"	Joshua Kennedy. Vacant lots south of St. Anthony, from Water to Commerce street, 110 feet, at $800 per foot	88,000
"	Joshua Kennedy. Vacant lot east of Water to Commerce street, north of Campbell & Cleveland, 175 feet, at $500	87,500
	(Amount brought forward.)	
"	Joshua Kennedy. Vacant lots south of Orange Grove tract, from Water to Royal street, 175 feet, at $600	100,000
"	Joshua Kennedy Vacant lot north of St. Anthony, east of Royal street, west of Campbell and Cleveland, 100 feet on Royal	50,000
"	Joshua Kennedy. Entire vacant square north of St. Louis, west of Water street, south of St. Anthony, and east of Royal street	265,000
"	Joshua Kennedy. Vacant triangular lot southeast corner of Royal and State, 40 feet on Royal street	12,000
1838.	Campbell & Cleveland. Eight brick stores and lots, north of St. Louis street, east of Water, and south of Kennedy	70,000
"	Campbell & Cleveland. Water pier east of Commerce, south and north of St. Anthony street, and south of Kennedy	65,000
"	Campbell & Cleveland. Vacant lots north of St. Anthony street, south of Kennedy, between Commerce and Water	50,000
"	Campbell & Cleveland. Brick store and lot northwest corner of St. Anthony and Water, 100 feet square	30,000
"	Joshua Kennedy. Vacant lot northwest corner of St. Louis and Commerce streets	35,000
"	Joshua Kennedy. Vacant lot east of Water street to Commerce street, south of State street, north of Campbell	60,000
"	Joshua Kennedy. Vacant lot north of St. Anthony, east of Royal west of Campbell & Cleveland	20,000
"	Joshua Kennedy. Vacant lot south of Orange Grove, from Royal to Water street	80,000
"	Joshua Kennedy. Square north of Campbell & Cleveland, east of Water, south of St. Anthony, and west of Commerce	55,000
"	Joshua Kennedy. Two brick stores and entire square north of St. Louis street, west of Water, south of St. Anthony, and east of Royal street	200,000
"	Joshua Kennedy. Water privilege east of Commerce street, north of St. Louis, south of St. Anthony street, including wharf	180,000
"	Joshua Kennedy. Water pier east of Commerce, north of Campbell & Cleveland, and south of State street	87,000
"	Joshua Kennedy. Vacant triangular lot, southeast corner of Royal and State streets	6,000
1839.	Campbell & Cleveland. Eight brick stores north of St. Louis street, east of Water, and south of Kennedy	70,000
"	Campbell & Cleveland. Water privilege east of Commerce, north of St. Anthony, and south of Kenn dy	65,000

A—Continued.

1839.	Campbell & Cleveland. Vacant lot north of St. Anthony, south of Kennedy, and between Commerce and Water	$50,000
"	Campbell & Cleveland. Brick store and lot, northwest corner of St. Anthony and Water street, 100 feet square	30,000
"	Joshua Kennedy. Vacant lot northwest corner of St. Louis and Commerce streets, 110 feet square, and 350 feet front	35,000
"	Joshua Kennedy. Vacant square north of Campbell & Cleveland, east of Water street, south of St. Anthony street, and west of Commerce	55,000
"	Joshua Kennedy. Water privilege east of Commerce street, west of St. Louis, south of St. Anthony and wharf, 244 feet	150,000
"	Joshua Kennedy. Water privilege east of Commerce, west of Campbell & Cleveland, and south of State street, 175 feet	87,000
"	Joshua Kennedy. Vacant lot east of Water street to Commerce, south of State street, and north of Cleveland & Campbell	60,000
"	Joshua Kennedy. Vacant lot north of St. Anthony, east of Royal street, west of Campbell & Cleveland, 100 feet on Royal street, at $200	20,000
"	Joshua Kennedy. Vacant lot south of Orange Grove tract from Water to Royal streets	80,000
"	Joshua Kennedy. Triangular lot southeast corner of Royal and State streets	6,000
"	Joshua Kennedy. Entire square north of St. Louis, west of Water, south of St. Anthony, and east of Royal, and two brick stores on Water street	200,000
1840.	Henderson Kinney. Vacant lot 203, bounded by St. Anthony, fronting on Commerce, J. Kennedy	6,000
"	Henderson Kinney. Wood yard S. S., St. Anthony, between Commerce and Front streets	5,000
"	William Kitchen. Brick building southeast corner of Water and State streets	6,000
"	Joshua Kennedy. Vacant square 202	120,000
"	Joshua Kennedy. Two brick stores west of Water street, between St. Louis and St. Anthony streets	10,000
"	Joshua Kennedy. Vacant square 203, with wharf in front	55,000
"	Joshua Kennedy. Vacant lots, square 205, bounded by Water, State, and Commerce	20,000
"	Joshua Kennedy. Wharf between St. Anthony and State	15,000
"	Joshua Kennedy. Vacant lots, 80 feet wide, square 204, between Commerce, Front, and State streets, and Campbell & Cleveland	22,500
"	Joshua Kennedy. Vacant land, square 206, bounded by St. Anthony, State, and Water streets	62,500
1841.	Campbell & Cleveland. Eight brick stores and lots, square 202, northeast corner of St. Louis and Water streets	48,000
"	Campbell & Cleveland. Brick buildings and lot 206, northwest corner of St. Anthony and Water	25,000
"	Campbell & Cleveland. F. buildings, Indian wharf, and lot 205, northeast corner of St. Anthony and Water streets, to the channel of river	40,000
"	Benjamin Meadows. Vacant lot, 203, southeast corner of St. Anthony and Commerce street	12,000
"	Joshua Kennedy, estate. Brick stores and vacant square 201, west of Water, east of Royal, south of St. Anthony, north of St. Louis	110,000
"	Joshua Kennedy, estate. Three quarters of square 202, south of St. Anthony, east of Water, west of Commerce, and north of St. Louis	50,000
"	Joshua Kennedy, estate. Three quarters of vacant square and two wharves and water privilege, square 203, northeast corner of St. Louis and Commerce	60,000

A—Continued.

1841.	Joshua Kennedy, estate. Vacant lots, square 205, east of Water, west of Commerce, between Kitchen and Cleveland & Campbell...	$35,000
"	William Kitchen. Brick stores, wharf, and lot, and water privilege, square 205, southeast corner of Water and State streets, to the channel of the river.....	30,000
1842.	Branch Bank. One-third int. brick stores, square 266, northwest corner of St. Anthony and Water.....	7,000
"	Branch Bank. One-third int. in lot and front houses, including wharf, 205, northeast corner of St Anthony and Water, extending to the channel of the river.....	12,000
"	Branch Bank. Front warehouse, 206, southwest corner of State and Water, and running to Magnolia.....	4,000
"	James Campbell. Eight brick stores, square 202, northeast corner of Water and St. Louis.....	30,000
"	James Campbell. Two-thirds int. in four frame houses and wharf, 206, northeast corner of St. Anthony and Water.....	24,000
"	James Campbell. Two-thirds int. in brick stores and lot, 205, northwest corner of St. Anthony and Water.....	14,000
"	William H. Ketchum. Vacant lot and wharf, southeast corner of Commerce and State.....	10,000
"	Joshua Kennedy, estate of. Brick house and vacant square 201, north by St. Anthony, south by St. Louis, east by Water, and west by Royal.....	95,000
"	Joshua Kennedy, estate of. Vacant lots about seven-eighths of square 206, north of St. Anthony, south of State, east of Royal, and west of Water, and Cleveland & Campbell.....	50,000
"	Joshua Kennedy, estate of. Three quarters of vacant square 202, bounded north by St. Anthony, south by St. Louis, east by Commerce, and west by Water.....	40,000
"	Joshua Kennedy, estate of. Three quarters of vacant square and two wharves 203, northeast corner of St. Louis and Commerce, running to the channel of the river.....	15,000
"	Joshua Kennedy, estate of. Vacant lots about half square 205, east of Water, between St. Anthony and State, running to Commerce	27,500
"	Joshua Kennedy, estate of. Vacant lots and wharf and wharf property, 204, east of Commerce, between St. Anthony and State.....	15,000
"	William H Ketchum. Brick stores on each corner, 205, southeast corner of Water and State, and southwest corner of State and Commerce.....	15,000
"	Bank. One half interest in eight brick stores, 302, northeast corner of St. Louis and Water.....	15,000
"	Bank. One half interest in lot and W. buildings and Indian wharf, northeast corner of St. Anthony and Water, to the channel of the river.....	20,000
"	Bank. One half interest in one brick store and blacksmith shop, northwest corner of St. Anthony and Water.....	11,000
"	Bank. Warehouse and lot, 206, southwest corner of State and Water.....	4,000
1842.	William Kitchen. Two brick stores and lots, 205, southeast and southwest corners of State and Water and Water and State.....	15,000
"	William Kitchen. Vacant lot and wharf, southeast corner of Commerce and State.....	10,000
"	Unknown owners. Vacant lots, 203, southeast corner of St. Anthony and Commerce streets, to McGran & Noonan.....	10,000
"	Joshua Kennedy, estate of. Brick house and vacant lot, 201, north by St. Anthony, south by St. Louis, east by Water, west by Royal	80,000
"	Joshua Kennedy, estate of. Vacant lots, about seven-eighths of square 206, north of St. Anthony, south of State, east of Royal, and west of Water.....	45,000

A—Continued.

1843.	Joshua Kennedy, estate of. Three quarters of square and two wharves, 203, northeast corner of St. Louis and Commerce, to channel of river	$20,000
"	Joshua Kennedy, estate of Three quarters of square 202, north by St. Anthony, south by St. Louis, east by Commerce, west by Water	35,000
"	Joshua Kennedy, estate of. About half of square 205, east of Water, between St. Anthony and State streets, to channel of river	30,000
1844.	Branch Bank. Cotton shed and lot 39 by 300 feet, 206, southwest corner of Water and State streets	12,000
"	Branch Bank. One half of eight brick stores, 202, northeast corner of Water and St Louis streets	15,000
"	Branch Bank. One half of one brick house and iron foundry, 206, northwest corner of Water and St. Anthony	12,000
"	Branch Bank. One half of small tenements and lots, from Commerce to Water streets, St. Anthony	17,000
"	Branch Bank. One half of vacant lot, 205, corner of Water and St. Anthony, fronting Commerce and Front streets	10,000
"	Branch Bank. One half vacant lot and wharf, immediately fronting of the above	20,000
"	James Campbell. One half interest in eight brick stores, 201, northeast corner of Water and St. Louis	15,000
"	James Campbell. One half interest in one brick store and foundry, 206, northwest corner of Water and St. Anthony streets	10,000
"	James Campbell. One half interest in lot and wooden buildings and Indian wharf, northeast corner of St. Louis and St. Joseph	30,000
"	A. Meslier. Vacant lot, 203, on Front street, between St. Anthony and St. Louis streets, 55x80 feet	6,870
"	A. Meslier. Vacant lot, 203, on corner of St. Anthony and Commerce, 45x90	7,000
"	A. Meslier. Vacant lot, 202, on Water, between St. Anthony and St. Louis, 55x102	5,000
"	A. Meslier. Vacant lot, 202, on corner of Water and St. Anthony 45x100	4,500
"	Orange Grove Company. Land from Water to Commerce and wharf, wharf, 205, between State and St. Anthony, to river	35,000
"	B. Skaats & Co. Brick foundry, 205, southeast corner of Water and State	10,000
"	Joshua Kennedy, estate of. Vacant lots, 206, east of Royal, between State and St. Anthony	15,000
"	Joshua Kennedy, estate of. Vacant square 201, between Royal, Water, St. Louis, and St. Anthony	80,000
"	Joshua Kennedy, estate of. Three quarters of vacant square 202, north by St. Anthony, south by St. Louis, east by Commerce, and west by Water	35,000
"	Joshua Kennedy, estate of. Three quarters of vacant square 202, and two wharves, northeast corner of St. Louis and Commerce, to channel	50,000
"	Joshua Kennedy, estate of. Brick buildings on square 205, southwest corner of State and Commerce, running to river; and also the lot in the rear of the foundry of Gazzam	20,000
"	Joshua Kennedy, estate of. A strip running from river to Water street, including three quarters of Paterson's blacksmith's shop, 50 feet wide	20,000
1845.	Branch Bank. Brick buildings, northeast corner of St. Louis and Water streets	14,000
"	Branch Bank. Brick buildings, northwest corner of Water and St. Anthony streets	15,000

A—Continued.

1845.	Branch Bank. Sheds and lots, northeast corner of Water and St. Anthony	$8,500
"	James Campbell. Vacant lands, wharf, and water privilege, east of commerce, north of St. Anthony, square 204	25,000
"	James Campbell. House and lots, northwest corner of Commerce and St. Anthony, square 205	14,000
"	Kitchen & Smith. Foundry and lot, southeast corner of Water and State, square 205	10,000
"	William Kitchen. Water privilege and bulkhead, 204 square, east of Commerce, and south of State	8,000
"	Sidney Smith, agent. Vacant land east of Commerce, west of Water, between St. Anthony and State, square 205	16,000
"	Sidney Smith, agent. Vacant land and wharf, east of Commerce, and north of Shipper's Press	18,500
"	Sidney Smith, agent. One fourth Carter & Hall's warehouse	18,000
"	Sidney Smith, agent. Half of press and wharf	20,000
"	William E Kennedy, heirs of. Three quarters of warehouse	54,000
"	William E. Kennedy, heirs of. Half of press	20,000
"	Joshua Kennedy, estate of. Lot and part of blacksmith shop, east of Water to Commerce, between Campbell and Orange Grove line	8,500
"	Joshua Kennedy, estate of. House and lot, 205, southwest corner of Commerce and State	8,500
"	Joshua Kennedy, estate of. Two brick buildings and entire square 201, north of St. Louis, south of St. Anthony, between Royal and Water	65,000
"	Joshua Kennedy, estate of. Two thirds vacant land, square 202, west of Commerce, north of St. Louis, south of St Anthony	35,000
"	Joshua Kennedy, estate of. Entire square 203, east of Commerce, and north of St. Louis, and south of St. Anthony	32,500
"	Joshua Kennedy, estate of. Wharf east of Commerce, north of St. Louis	15,000
"	Joshua Kennedy, estate of. Wharf east of Commerce, and south of St. Anthony	20,000
"	Joshua Kennedy, estate of. Vacant land east of Royal, between State and St. Anthony, square 206	15,000

Exhibit B—to Samuel Penny's testimony.

At an adjourned meeting of the board of mayor and aldermen, January 3d, 1831, I find the following:

Resolved, That the board proceed to appoint city assessors for the present year. Henry V. Chamberlain, William Smith Richards, and William M. Garrow being put in nomination, were duly appointed.

A true copy, from the records of the corporation.

SAMUEL PENNY, *Clerk.*

Edward Hall's testimony.

On the 13th day of March, A. D. 1845, Edward Hall, one of the witnesses, came before me, Thos. A. Hamilton, one of the commissioners named in the commission hereto attached, at the office of P. & T. Hamilton, in the city of Mobile, and the said E. Hall having been first duly sworn, did testify and depose as follows, to wit:

To the first interrogatory he answers and says: He first came to Mo-

bile in the spring of the year 1818; he had not much acquaintance with Joshua Kennedy and Wm. E. Kennedy until the year 1820, but he knew them from that time until their death; it always appeared to deponent that there was a close intimacy between Joshua and Wm. E. Kennedy in relation to all land titles in which they had an interest.

To the second interrogatory deponent says: He cannot say that he does know that Wm. E. Kennedy had interested said Joshua in any parcels of land to which he had title, except that at one time deponent had a claim to some property at the forks of the road in the neighborhood of Mobile, to which the Kennedys, or one of them, had also some claim, and then both Joshua and Wm. E. Kennedy came to see deponent about the same, and appeared to be equally interested in the property; this property was in the Price claim, and deponent thinks the title was then in Wm. E. Kennedy; subsequently Wm. E. Kennedy conveyed the Price claim to his brother Joshua.

To the third interrogatory deponent answers and says: Wm. E. Kennedy's habits were intemperate in the year 1820, and from that time till his death. It always appeared to deponent that Wm. E. Kennedy was guided and very much influenced by his brother Joshua. Deponent does not know what were the pecuniary means of either Joshua or William; William E. appeared to be very intemperate, and to be doing no business. Deponent does not know where his children resided.

To the fourth interrogatory deponent answers: He is not able to answer to the matters inquired of in this interrogatory.

To the fifth interrogatory deponent says: He does not know.

To the sixth interrogatory deponent says: He does not know of Samuel Kitchen's having ever lived in Mobile, or improved any property in this city; he has heard Kitchen's wharf spoken of in this city, but does not know who built it; always thought it belonged to a young man of that name; his son, perhaps.

To the seventh interrogatory deponent says: He knows there is such property as that described in this interrogatory, but he knows nothing about the titles to it, nor where they come from.

To the eighth interrogatory deponent says: The principal business of Joshua Kennedy, during the last twenty years of his life, was the pursuit of land titles, in which pursuit he labored very industriously; he did appear very anxious to acquire property of that description; he devoted himself entirely to the acquisition of land titles.

To the ninth interrogatory deponent says: Joshua Kennedy had a great reputation for ingenuity and address in the acquisition and prosecution of claims for lands.

To the tenth interrogatory deponent says: He does not know.

To the eleventh interrogatory deponent says: He does not know any thing further likely to be material in this suit, unless it be that he understood that Wm. E. Kennedy conveyed the Price grant to Joshua in order that he might manage it for him.

Cross examined.

To the first cross interrogatory deponent answers and says: He is not certain, but he believes Wm. E. Kennedy lived down the bay in 1820; he cannot say where Joshua lived at that time; the intimacy between Joshua and William was the intimacy of brothers, and of those apparently interested together in the same property; it was manifested by one acting for the other with regard to the property. Deponent understood they were connected together in the land business, but he can only speak of his own knowledge with regard to the Price claim as before related in his direct examination.

To the second cross interrogatory deponent answers and says: He can only state as to the Price title; does not know the precise time when this interest commenced; cannot say whether by deed or otherwise.

To the third interrogatory deponent says: He does not know.

To the fourth interrogatory deponent says: He cannot say how early Wm. E. Kennedy became intemperate, but he thinks it was as early as 1818.

To the fifth interrogatory deponent says: Wm. E. Kennedy did appear to be a yielding, accommodating disposition; deponent does not know what influence his friends might have over him; deponent does not know positively of any complaint on the part of Joshua that his brother was fooling away his property, but he did understand that it was on account of his fooling away his property that Joshua got William to convey the Price property to him that he might manage it for him.

To the sixth cross interrogatory deponent says: He knows nothing about the matters inquired of in this interrogatory.

To the seventh cross interrogatory deponent says: He knows nothing about it.

To the eighth cross interrogatory deponent says: He knows nothing at all about the character of Samuel Kitchen; has no acquaintance with him; never heard any thing against him.

To the ninth cross interrogatory deponent says: He knows nothing about it.

To the tenth, eleventh, and twelfth cross interrogatories deponent says: He knows nothing about the matters inquired of.

To the thirteenth cross interrogatory deponent says: He did hear of the act of Congress, spoken of in this interrogatory, directly after it was passed; deponent thinks it was known, after its passage, to such of the citizens *of the citizens* of Mobile as took any interest in city matters; he does not recollect who he heard speak of it.

To the fourteenth cross interrogatory deponent says: He has heard of the corporation of Mobile claiming the property described in this interrogatory under this law; some suits were brought, but deponent does not recollect whether any was commenced against Joshua Kennedy or his executors.

To the fifteenth cross interrogatory deponent says: He never knew

of any street in Mobile that went by the name of "North Boundary street."

To the 16th cross interrogatory deponent says: He dealt so little in lands he cannot say.

To the 17th cross interrogatory deponent says: Joshua Kennedy was well acquainted with the laws relating to land titles; he was watchful as to what affected titles to property in the city of Mobile. Deponent does not doubt that Joshua Kennedy knew of the act of Congress before spoken of.

To the 18th cross interrogatory deponent says: In 1829 and 1830, Joshua Kennedy did claim considerable property in the lower part of the city of Mobile. Deponent thinks he appeared to be more interested in the growth of the city upwards.

To the 19th cross interrogatory deponent says: He knows nothing about the matters inquired of.

To the 20th cross interrogatory deponent says: He thinks John Duncan and Henry Hitchcock made compromises with the mayor and aldermen for their lands on the eastern side of the city, but does not know of any other compromises. The property of Duncan and Hitchcock was just above Dauphin street; deponent does not recollect the dimensions of the property nor the amount paid the city.

To the 21st and 22d cross interrogatories deponent answers and says: He knows nothing further. EDW'D HALL.

Sworn to and subscribed before me this 13th day of March, A. D. 1845.

THOS. A. HAMILTON.

O. Sibley's testimony.

On the 14th day of March, A. D. 1845, Origen Sibley, one of the witnesses, came before me, Thos. A. Hamilton, one of the commissioners named in the commission, at the office of P. & T. Hamilton, in the city of Mobile, and the said witness having been first duly sworn, did testify and depose as follows, to wit:

To the first interrogatory he answers and says: He knows nothing about it.

To the 2d, 3d, and 4th interrogatories deponent answers: He does not know.

To the 5th interrogatory deponent answers and says: He knows, there are lands north of St. Louis street, situate on the river, but he knows nothing in particular about any titles or claims thereto.

To the 6th and 7th interrogatories deponent answers: He knows nothing about it.

Cross examined.

To the first, second, and third, and fourth cross interrogatories deponent answers and says: He knows nothing.

To the fifth cross interrogatory deponent says: He has heard Joshua Kennedy speak of the Price claim; he claimed to own it, but deponent

does not know whether the land herein inquired of was included in the Price claim.

To the sixth cross interrogatory deponent says: The lands north of St. Louis street, lying on the river, had some determinate value in the years 1829 and 1830, but what their value was deponent is not now able to state; deponent cannot say with any certainty in how much demand marsh property was in 1829 and 1830, in the upper suburbs of the city; the city was gradually passing upwards; cannot say whether property in that part of the city was desirable at that time; deponent thinks some portion of these lands has been reclaimed from the marsh since that time, but deponent cannot say how much; deponent does not know by whom these lands were reclaimed; deponent does not know of any improvements put up by Joshua Kennedy north of St. Louis street on the river; deponent thinks the building on the north side of St. Louis street, and east side of Water, was erected after Kennedy had sold the ground on which it stands; to the rest of this interrogatory deponent says he is unable to speak with any certainty.

To the 8th cross interrogatory deponent says: He has no particular recollection of those lands in 1824 and 1825; he never had occasion to notice these lands particularly, and cannot say any thing further with regard to them.

In reply to the additional interrogatories—

To the first additional direct interrogatory deponent says: He never was acquainted with William E. Kennedy; deponent's first distinct recollection of Joshua Kennedy commences with about the year 1827 or 1828; he knew him from that time until his death; deponent knows nothing, except from report, as to the intimacy between Joshua and William E. Kennedy in relation to land titles.

To the 2d additional interrogatory deponent says: He does not know, except from report, of Wm. E. Kennedy's having given Joshua an interest in any land of his; deponent does not recollect to have heard of William and Joshua being interested together in any lands besides the Price tract.

To the 3d additional interrogatory deponent says: He came to this country to reside in the year 1822; he saw Wm. E. Kennedy once in that year; he believes him to have been dissipated at that time, but cannot answer as to his habits in 1820; to the remainder of this interrogatory deponent says, he cannot answer; some time after the death of Wm. E. Kennedy, deponent knew his children resided with Joshua; deponent thinks this was about 1828 and afterwards.

To the 4th additional interrogatory deponent says: He became acquainted with Samuel Kitchen about the year 1827 or 1828; does not know any thing about him in 1820.

To the 5th additional interrogatory deponent says: He does not know.

To the 6th additional interrogatory deponent says: He does not know of Samuel Kitchen's ever residing in Mobile; does not know, except from report, that said Kitchen ever owned any property here; he has heard that Joshua Kennedy made him a deed for some property in the

upper part of the city; does not know what property; it was since 1830 that deponent heard of this conveyance.

To the 7th additional interrogatory deponent says: He knows the property east of Water street and north of Dauphin, but knows nothing in particular about it; he knows nothing about the titles to this property, nor from whom they are derived.

To the 8th additional interrogatory deponent says: The principal occupation of Joshua Kennedy, from the time deponent's acquaintance with him commenced until his death, appeared to be the settlement of his land titles; deponent does not know that Joshua Kennedy displayed greater anxiety than any body else would have done under the same circumstances in acquiring land titles; he possessed a good many claims to lands, and he was anxious to settle them.

To the 9th additional interrogatory deponent says: Joshua Kennedy's reputation was very high for shrewdness and tact, and for knowledge in the mode of managing land claims; deponent thinks he was well versed in a knowledge of the land titles of this country.

To the 10th additional interrogatory deponent says: He does not know of any acquisitions of lands by Samuel Kitchen; for some years after deponent first knew Samuel Kitchen he lived at Kennedy's mills; then he moved into the Piney woods, several miles from the mills, where he had no occupation that deponent is aware of; afterwards he moved to near Stockton, where he and his son, or one of them, built a mill, where he now resides.

To the 11th additional interrogatory deponent says: He is not aware that he knows any thing further.

In reply to the additional cross interrogatories.

To the first, second, third, fourth, fifth, sixth, and seventh additional cross interrogatories deponent says: He is not able to answer these interrogatories any more fully than he has already done.

To the 8th additional cross interrogatory deponent says: He thinks he has known Samuel Kitchen since about 1827 or 1828; his character is that of a plain, straightforward, and industrious man.

To the 9th, 10th, 11th, and 12th additional cross interrogatories deponent says: He cannot say anything about them, as he does not know.

To the 13th additional cross interrogatory deponent says: He has heard of the act of Congress mentioned in this interrogatory, but cannot say precisely when he heard of it, but presumes it was some time after its passage; he thinks it was a matter of public notoriety in Mobile shortly after its passage; deponent has frequently heard the act brought up in court; and has heard many persons speak of it at different times; has heard his brother, Judge Hitchcock, Mr. John Fowler, and the Pollards speak of said act.

To the 14th and 15th additional cross interrogatories deponent says: He does not know.

To the 16th additional cross interrogatory deponent says: He supposes the said act of Congress must have had the effect of depreciating the value

property on the river in the estimation of those dealing in land titles; but deponent cannot say, except from supposition.

To the 17th additional cross interrogatory deponent says: Joshua Kennedy was in general well acquainted with the laws relating to land titles; and he believes was watchful as to his claims in Mobile.

To the 18th additional cross interrogatory deponent says: He knows Joshua Kennedy claimed the Price tract, but knows nothing as to any other claims of said Joshua in Mobile county.

To the 19th additional cross interrogatory deponent says: He knows nothing about the titles to the lands east of Water and north of Dauphin streets; deponent has heard that Nicholas Weeks, of Baldwin county, owns the store on the northeast corner of Dauphin and Water streets.

To the 20th, 21st, and 22nd additional cross interrogatories deponent says: He does not know anything further than he has already stated.

ORIGEN SIBLEY.

Sworn to and subscribed before me, this 14th day of March, A. D. 1845.

THOS. A. HAMILTON, *Com.*

Jacob Baptiste's testimony.

On the 15th day of March, A. D. 1845, Jacob Baptiste, one of the witnesses, came before me, Thos. A. Hamilton, one of the commissioners named in the commission hereto attached, at the office of P. and T. Hamilton, in the city of Mobile; and the said Baptiste having been first duly sworn, did testify and depose as follows:

To the first interrogatory he answers and says: He never did himself purchase any portion of the land from Joshua Kennedy, situated as described in this interrogatory; a portion of the land described in this interrogatory was sold by Joshua Kennedy to Jacques Chigizola and Joseph Krebs, between 1820 and 1824; deponent does not recollect the precise date of this sale, but thinks it was in 1822 or 1823; deponent thinks the lot sold to Krebs and Chigizola was one hundred feet front on Royal street, and running through to the channel of the river; shortly after this purchase was made from Kennedy, Jacques Chigizola went to Italy, and left deponent his agent in Mobile.

To the 2nd interrogatory deponent says: After Chigizola's return from Italy, Kennedy came to him and said he wanted Chigizola to give him back the above lot of land, and he would return him the money, as he (Kennedy) said the title to this land was not complete; deponent heard this conversation, and this arrangement was made; Chigizola did return his interest in the property to Kennedy; deponent is not positive, but he thinks this conversation occurred some time in 1824.

To the 3d interrogatory he says: He was acquainted with Sidney E. Collins, the plaintiff in this suit; he saw him in Mobile frequently, from the time he was a boy until about the year 1830 or 1832, when deponent lost sight of him, and does not know where he went at that time; deponent does not recollect precisely what business he followed while in Mobile.

To the 4th interrogatory deponent says: He is not aware that he knows anything further.

Cross examined.

To the first cross interrogatory deponent says: He cannot state positively where the northern line of the Baudain tract runs, but thinks it is near the same as the southern boundary line of the Orange Grove tract; deponent cannot describe the courses and locations of those lines, nor where they cross Commerce and Water streets.

To the 2d cross interrogatory deponent says: The land sold Krebs and Chigizola was on the north side of St. Anthony street.

To the 3d cross interrogatory deponent says: He does not know whether said lot is on the north or south half of Baudain tract; deponent says he has heard of some lawsuit betwixt Kennedy's estate and the Orange Grove company, about some lands in the upper portion of the city; deponent does not know who now owns the lands formerly sold to Chigizola and Krebs.

To the 4th cross interrogatory deponent says: He has already answered this as fully as he is able to do.

To the 5th cross interrogatory deponent says: After about 1830 or 1832, he did not see Sidney E. Collins about Mobile as he had done before; he does not know where he went.

To the 6th cross interrogatory deponent says: He recollects having seen some posts on the property on the north of St. Louis street, and deponent heard they were put up by Samuel Kitchen, but does not know; does not recollect their situation at all; deponent does not know whether St. Anthony street was understood to be the division between the north and south half of the tract.

To the 7th cross interrogatory deponent says: He was.

To the 8th cross interrogatory deponent says: He was aware of the law of Congress referred to in this interrogatory; deponent thinks he first heard of this law 18 or 20 years ago; it was spoken of by the citizens, and did have a tendency to depreciate the other titles to property on the river.

To the 9th cross interrogatory deponent says: There was no such street as "North Boundary street" in Mobile in 1829 and 1830; and nobody could have known certainly what street was meant by such name; after the passage of the act of Congress, some of the citizens supposed this term was meant to refer to the north boundary of the city; there was no street of that name.

To the tenth cross interrogatory deponent says: He thinks the mayor and aldermen of Mobile did claim the property north of St. Louis street, described in this interrogatory. This claim was founded on said act of Congress. Deponent does not recollect particularly whether suit was commenced by them against Kennedy under this law, but some suits were commenced by them. Does not recollect when they commenced suit.

To the eleventh cross interrogatory deponent says: He is acquainted with the ground described in this interrogatory. In 1820 this land was unoccupied; some portion of it was dry, and some portion was low, marshy ground; the most of it was low and marshy, or covered with

water. Some of the ground betwixt Royal and Water streets was dry; the rest was low and wet. In 1825 this land was in pretty much the same condition as in 1820. Deponent does not recollect precisely, but somewhere about 1829 or 1830, or perhaps a little before, this land had begun to be filled up and improved. Deponent does not think the land described was worth more than five or six thousand dollars in cash in the year 1829 or 1830; it might have been worth a little more. Deponent does not recollect exactly what quantity of land there was.

To the twelfth cross interrogatory deponent says: Joshua Kennedy did own or claim lands in the lower part of the city of Mobile in 1829 and 1830, but very little on the river. He did own considerable land in the lower part of the city at that time; his interest in the growth of the upper part of the city, deponent thinks, was greater than his interest in that of the lower part.

To the thirteenth cross interrogatory deponent says: He knows nothing of Kennedy's purchase of the claims of the Collinses to lands in the upper part of the city, except what he heard from Joshua Kennedy himself. He heard Joshua Kennedy say he had bought a claim to such land from the Collinses. Deponent does not recollect exactly when he heard Kennedy speak of it; it was after he had got back the land from Chigizola. Deponent does not recollect what Kennedy said he had given for the Collins claim. Does not know whether it was considered he had given enough for it or not.

To the fourteenth cross interrogatory deponent says: Joshua Kennedy's customary mode of dealing he thinks was liberal.

To the fifteenth cross interrogatory deponent says: He is not aware that he knows any thing further.

JACOB BAPTIST.

Sworn to and subscribed before me, this fifteenth day of March, A. D. 1845. THOS. A. HAMILTON,
Commissioner.

Adolph Batre.

Adolph Batre, one of the witnesses named, came before me, Thos. A. Hamilton, one of the commissioners named in the commission hereto attached, at the office of said Batre in the city of Mobile, on Monday, the seventeenth day of March, A. D. 1845; and the said witness having been first duly sworn, did testify and depose as follows:

To the first interrogatory deponent answers and says: He never bought land *directly* from Joshua Kennedy, in the tract named in this interrogatory, but he did buy land there under a title which came from Kennedy. Deponent got a quit-claim deed from M. D. Eslava for land coming from Joseph Krebs, who himself got his title from Jacques Chigizola, who bought from Kennedy. Deponent does not recollect at what time Chigizola bought from Joshua Kennedy; deponent himself obtained his deed from M. D. Eslava in December, 1831. Deponent does not recollect what he paid for the land; the deed from Eslava states that he paid four thousand two hundred dollars, and a

copy of this deed is now hereto attached, marked exhibit A. The quantity of land purchased by deponent is shown by the deed just above referred to, and a copy of which is hereto attached.

To the second interrogatory deponent says: The only conversation he recollects having had with Kennedy, with regard to the lot above mentioned, was after Campbell and Cleveland had purchased said property, and were sued for the same; and then Joshua Kennedy said nothing further than to laugh at the idea of suit being brought for the lot.

To the third interrogatory deponent says: He does not recollect Sidney E. Collins at all.

To the fourth interrogatory deponent says: He is not aware that he knows any thing further that would be material in this controversy, unless it be that, in the year 1833, as shown by the deed, he sold to William F. Cleveland, for Campbell & Cleveland, the lot he has before stated he bought in the tract inquired of in the first interrogatory. Deponent sold the said property for five thousand five hundred dollars. A copy of the deed from deponent and his brother Charles, to Wm. F. Cleveland, is now hereto attached, marked exhibit B.

Cross examined.

To the first cross interrogatory deponent says: He does not know.

To the second cross interrogatory deponent says: He cannot answer this interrogatory any more fully than he has already done, except that he now states, that the lot he has spoken of in his direct examination lay on the north side of St. Anthony street, as deponent thinks.

To the third cross interrogatory deponent says: He knows nothing of the boundaries of the Baudain tract of land. He has heard that, long after he sold the land he has before spoken of, the Orange Grove Company sued Campbell & Cleveland for that land; but deponent does not know how the suit was decided.

To the fourth cross interrogatory deponent says: He has already answered this interrogatory in substance.

To the fifth and sixth cross interrogatories deponent says: He does not know.

To the seventh cross interrogatory deponent says: He knows nothing about the matter, except from report.

To the eighth cross interrogatory deponent says: He was not aware of such a law.

To the ninth cross interrogatory deponent says: He does not recollect any such street as North Boundary street in Mobile, in the year 1829 or 1830; deponent does not know any thing about any North Boundary street.

To the tenth cross interrogatory deponent says: He does not know.

A. BATRE.

Sworn to and subscribed before me, this 17 March, A. D. 1845.

THOS. A. HAMILTON,
Commissioner.

A. Demony's testimony.

On the 22d day of March, A. D. 1845, Augustin Demony, one of the witnesses, came before me, Thos. A. Hamilton, one of the commissioners named in the commission hereto attached, at the office of P. & T. Hamilton in the city of Mobile; and the said Demony having been first duly sworn, did testify and depose as follows, to wit:

To the first interrogatory he answers and says: He was acquainted with Joseph E. Collins, a surveyor of the Spanish Government at Mobile. He did use to reside at Pascagoula; thinks he resided there in 1812, and previously. Deponent's mother and the family lived down the bay, and Joseph E. Collins frequently visited in the house. Deponent was small when he first recollects Joseph E. Collins; thinks it was about 1808 or 1809 when Mr. Collins was most frequently in the habit of visiting at their house. Deponent is now forty-eight years of age. Deponent cannot undertake to say precisely when his acquaintance with Mr. Collins commenced; he recollects seeing him frequently when he was very young. Deponent's acquaintance with Mr. Collins continued until his death. He used to see him occasionally up to the time of his death. Deponent lived on the road betwixt Pascagoula and Mobile; and when Collins came to Mobile, or returned to Pascagoula, he generally used to stop at their house. Deponent does not recollect precisely the year when Mr. Collins died.

To the 2d interrogatory deponent says: He knows nothing about Mr. Joseph E. Collins's wife, except from hearsay; he heard of his having a wife, but did not know anything about her; he never saw her, and never knew Elizabeth Wilson.

To the 3d interrogatory deponent says: He did know George, Joseph, and Sidney Collins, and always supposed them to be the children of Joseph E. Collins; deponent did not know them when they were very small; deponent's first acquaintance was with George, and commenced about the year 1829 or 1830, when George first came to Mobile to live; deponent and George were fellow clerks, and were well acquainted with one another until George left the country; deponent does not recollect the year when George left, but he is inclined to think it was somewhere about 1834 or 1835; he cannot say positively; deponent never knew Joseph; deponent first knew Sidney some two or three years after he first knew George; deponent knew Sidney from that time until he left the State; thinks Sidney left the State before George; deponent missed him first, and believes he went to Mississippi, but cannot say positively where he went; deponent thinks when George first left here he went somewhere into Mississippi, and from there to Texas; deponent thinks the last time he saw George was about 1834 or 1835; cannot say exactly when he last saw Sidney; has seen Sidney in town again lately; saw him here a week or two ago.

To the fourth interrogatory deponent answers and says: When George first came to Mobile, he went as clerk with a man of the name of Joaquim Antunez, and afterwards was a clerk with Joseph Krebs, until he

left Mobile; deponent does not recollect of seeing Sidney at any employment; he was quite young when he first came to Mobile; deponent thinks George was in Mobile somewhere from four to six years; cannot say exactly how long Sidney was here.

To the fifth interrogatory deponent says: He does know the lands north of St. Louis street, in Mobile, and lying on the river in front of the residence of the Baudains; deponent does not know who claimed that land from 1806 till 1813; it was marshy, and subject to be overflowed by high tides; deponent does not know of any improvements erected at that time; deponent never conversed with Wm. E. Kennedy or Joseph Collins on the subject of those lands.

To the sixth interrogatory deponent says: He never had any conversations with Joshua Kennedy on the subject of the Collins claim.

To the seventh interrogatory deponent says: He is not aware that he knows any thing further that would be material.

Cross examined.

To the first cross interrogatory deponent answers and says: He has already answered this interrogatory, in substance, as fully as he is able to do; he always understood that Joseph E. Collins had a wife, and that he lived with her.

To the 2d cross interrogatory deponent says: He thinks Joseph E. Collins was in the habit of visiting Mobile, frequently, between the years 1805 and 1811; his duties as surveyor, deponent believes, required Mr. Collins to be in Mobile a good deal; deponent cannot state as to the length of time he used to spend in Mobile on his visits; thinks he was about as often in Mobile as in Pascagoula; deponent does not know of his ever bringing Elizabeth Wilson to Mobile with him.

To the 3d cross interrogatory deponent says: He should think George was probably somewhere about from 25 to 28 years old when he first knew him in 1829 or 1830; he should think Sidney was about 20 or 21 when he first knew him; deponent never was at the house of Joseph E. Collins.

To the 4th cross interrogatory deponent says: He has already stated he never heard any conversations of Wm. E. Kennedy or Joseph E. Collins on the subject of those lands.

To the 5th cross interrogatory deponent says: He has already stated he never had any conversations with Joshua Kennedy on the subject of those lands; when Joshua Kennedy began to improve those lands north of St. Louis street and on the river, deponent then heard that Kennedy claimed those lands under the Price grants; he appeared at that time to claim title to said land independently of every body else.

To the 6th cross interrogatory deponent says: He knows nothing about Joseph E. Collins' claims to these lands.

To the 7th cross interrogatory deponent says: He does not know the value of that property in 1829 and 1830; just about that time marsh property in the upper suburbs of the city and on the river was beginning to be in demand, but there was not much doing in that way; deponent

thinks these lands began to be improved and reclaimed about the year 1830, or a short time previously; Joshua Kennedy was the first who began to fill up and improve these lands; the Kitchens had something to do with the filling up, but whether for themselves, or not, deponent cannot say; he saw them there; Joshua Kennedy built a wharf, and did some filling up on the property, in 1829 or 1830; deponent thinks it was thought that it would pay to fill up these marsh lands on the banks of the river, up town; deponent does not know that there had been any filling up and reclaiming of the property north of St. Louis street previous to 1829 and 1830, but it had been tried south of St. Louis street to some extent; deponent does not know whether many were willing to engage in it.

To the 8th cross interrogatory deponent says: He recollects these lands in 1824 and 1825; deponent thinks these lands continued about the same from 1824 to 1825; deponent cannot estimate the value of these lands in the year 1825.

To the 9th cross interrogatory deponent says: He knows the property inquired of in this interrogatory; in 1820, there was a bluff on the east side of Royal street, which was above the water, but nearly all east of this bluff was subject to be overflowed in high tides; deponent supposes the high ground above the water extended some forty or fifty feet, or perhaps more, to the eastward of the before mentioned bluff; in 1829 and 1830, the appearance and condition of this property was considerably changed; heavy rains had washed away the bluff a good deal, and this had filled up the low ground considerably; Joshua Kennedy also had cut away the bluff somewhat, and used the ground for filling up; this property was somewhat improved by the year 1829 and 1830; deponent thinks there was some business done there at that time; some wharves and some other improvements, deponent thinks, were erected by that time; the principal business part of the city, in 1829 and 1830, was between Conti and St. Michael streets; in 1829 and 1830, it would have required an uncommonly high tide to overflow this land; deponent does not know the value of this land at that time, and cannot say whether it was in demand at that time; deponent does not know what would have been the cost of reclaiming such land from the marsh; deponent thinks land in that part of the city began to grow into estimation about the year 1830 or 1831; deponent cannot say by whose labors it was made to do so; deponent is totally unable to say what was the fair cash value of this land in the years 1829 and 1830.

To the 10th cross interrogatory deponent answers and says: He heard George Collins say he had sold his interest in that part of the city to Joshua Kennedy. Deponent thinks this was in 1832 or 1833. Deponent did not see the money paid, nor any part of it. He does not know the amount, but he heard George Collins say he had sold the land to Kennedy, and he knows he had money afterwards, which he had no other way of getting than from Kennedy. Deponent and George Collins were at that time clerks together for Joseph Krebs. Deponent does

not know what amount was paid by Kennedy, and cannot say whether it was enough for the land or not.

To the 11th cross interrogatory deponent answers and says: He does not know of any other way of getting married in this country, in the Spanish times, than through the agency of a Catholic priest. This was the only legal mode deponent knows of. The fact was generally made known in church, and proclaimed for several weeks beforehand.

To the 12th cross interrogatory deponent says: There were always priests here, as long as deponent recollects, except at one time. Deponent recollects there was no priest here for about twelve months. Deponent thinks this was about the year 1810, but is not positive. The first priest deponent recollects here was named Vaugeios; afterwards there were others. Deponent does not recollect all their names. Amongst them were Messina and Vincente, and some others. Pascagoula (deponent believes) was included in the parish of the church of the Holy Conception, at Mobile, in the year 1812, and before. Deponent thinks it was customary for the priests resident in Mobile to visit Pascagoula in those years. Deponent thinks a priest could have been procured, either here or at New Orleans, during that period, to perform the marriage ceremony, if the parties were able to pay the fees. It was more usual for parties to come to Mobile to get married than for them to send for a priest.

To the 13th cross interrogatory deponent says: He has never been at Pascagoula. To the rest of this interrogatory deponent says: He is unable to answer it any more fully than he has already done.

To the 14th cross interrogatory deponent answers and says: It was not very uncommon for persons of opposite sexes to live together in this country without being married by a priest, but they were not considered married.

To the 15th cross interrogatory deponent says: People were particular about recording marriages in those times.

To the 16th cross interrogatory deponent says: He never was at Pascagoula.

To the 17th cross interrogatory deponent says: He is not aware that he knows anything further that is material to this controversy.

AUG. DEMONY.

Sworn to and subscribed before me this 22d day of March, A. D. 1845.

THOS. A. HAMILTON,
Commissioner.

Jos. S. Kennedy's testimony.

On the 25th day of March, A. D. 1845, Joseph S. Kennedy, one of the witnesses, came before me, Thos. A. Hamilton, one of the commissioners named in the commission hereto attached, at the office of P. & T. Hamilton, in the city of Mobile, and the said Joseph S. Kennedy, having been first duly sworn, did testify and depose as follows, to wit:

To the first interrogatory deponent answers and says: He does not know the date of the deed from Wm. E. Kennedy to Samuel Kitchen, nor can he say positively what lands were embraced in said deed, but believes they were lands in the neighborhood of Water and Dauphin streets. Deponent has had conversations with Joshua Kennedy with regard to some lands which Samuel Kitchen at one time pretended to claim, under a conveyance from either William E. Kennedy or Joshua, deponent cannot say which. Deponent was once in Baldwin county, some years since, but he does not recollect the precise year when he heard it said that Samuel Kitchen said he was coming over to Mobile to claim his property from Joshua Kennedy. When deponent returned to Mobile he told Joshua Kennedy this, and Joshua then said, if Samuel Kitchen were to tell him so he would spit in his face, and kick his backside. Deponent has understood, from common report in Baldwin county, that Samuel Kitchen had given either Joshua or Wm. E. Kennedy (deponent cannot say which) some seven hundred dollars for land, and that Samuel Kitchen never got back either the money or the land. Deponent has frequently heard Joshua Kennedy say of the deed made to James Innerarity, that it was made by William E. Kennedy while he was drunk; and once heard Joshua say that the deed made to Samuel Kitchen was resorted to in order to defeat Innerarity's claim and preserve the property for William E. Kennedy's children. Deponent has understood that the circumstances under which the deed to Innerarity was made were as follows, viz: Wm. E. Kennedy was drunk, and, while in that condition, he boasted to Innerarity that one of Innerarity's children was his, (Kennedy's,) and Innerarity replied, if he claimed him he had better provide for him, and then Wm. E. Kennedy made the deed to Innerarity. Deponent has heard this more than once, and thinks he has heard it from Joshua Kennedy, but is not positive. Deponent does not recollect any other conversations with Joshua Kennedy on the subject of these conveyances.

To the second interrogatory deponent answers and says: He has already answered this interrogatory as fully as he is able to do. He has already stated that Joshua, when told of Samuel Kitchen's claim, exclaimed, that if he were to tell him so he would spit in his face and kick him. He has also stated that Joshua Kennedy told him was the object of the conveyance to Samuel Kitchen, viz., to defeat Innerarity's claim to that property.

To the third interrogatory deponent says: He has already answered this interrogatory in substance. He has stated that he informed Joshua he had heard of Samuel Kitchen's intention to claim the property, and has also stated what Joshua Kennedy then said.

To the fourth interrogatory deponent says: He is not aware that he knows anything further that would be material to either party in this suit.

Cross examined.

To the first cross interrogatory deponent answers and says: He does not know Sidney E. Collins. He has been told, by Jesse Carter and

Daniel E. Hall, (as he thinks,) that Wm. D. Primrose, Drury Thompson, and a man of the name of Collins, were interested in this suit, but he does not know the first name of Collins. He thinks it was Dr. Carter and Mr. Hall who told him they thought these men were interested in carrying on the suit. Deponent never has been solicited to take an interest in this suit.

To the 2d cross interrogatory deponent answers and says: He never has, in any former suit, except in that of the heirs of Wm. E. Kennedy vs. Joshua Kennedy's executors and heirs, spoken of anything that Joshua Kennedy had said to him in the conversations alluded to in the former parts of this examination. In that suit he did, in his answer to the cross bill, allude to a conversation with Joshua Kennedy on the subject of the conveyance to Samuel Kitchen, which conversation had also some allusion to the conveyance to James Innerarity. Deponent was one of the parties in that suit, being one of the heirs of William E. Kennedy; deponent does not recollect that he conversed with any one on the subject of his answer at any time immediately previous to filing his answer; deponent thinks that Dr. Carter requested him to go up to Mr. Campbell's (their lawyer) and tell him what he knew about the matters he had to answer about; but deponent does not recollect that he had any conversation with any one as to what would be the purport of that answer.

To the 3rd cross interrogatory deponent says: He recollects at this time the facts which he has hereinbefore stated; when he made said answer to the cross bill in chancery, deponent stated the facts therein contained as of his own knowledge, and not at the prompting of others.

To the 4th cross interrogatory deponent says: He thinks he did not, at the time of his said answer, undertake to speak of the dates of any deeds merely from recollection; deponent does not recollect the precise dates of the deeds either to Innerarity or Kitchen.

To the fifth cross interrogatory deponent says: He has read over the answer before referred to since the bringing this suit; he heard it read over a few nights ago, and has looked at it again this morning; deponent thinks he should not have needed the assistance of said answer in order to recollect any thing he has hereinbefore stated.

To the 6th cross interrogatory deponent says: He has already answered the principal part of this interrogatory; there was no one present when this conversation took place besides deponent and Joshua Kennedy.

To the 7th cross interrogatory deponent says: He had but one conversation with Joshua Kennedy on the subject of Samuel Kitchen's claim.

To the 8th cross interrogatory deponent says: He only recollects hearing Joshua Kennedy speak once on the subject of the deed to Samuel Kitchen, as before stated.

To the 9th cross interrogatory deponent says: He has already answered this interrogatory in substance; deponent never heard Joshua Kennedy speak of more than one deed to Samuel Kitchen.

To the 10th cross interrogatory deponent says: He has already answered this interrogatory in substance.

To the 11th cross interrogatory deponent says: He should judge that his recollection of the dates of written instruments was very bad.

To the 12th cross interrogatory deponent says: At the time he told Joshua Kennedy he had heard that Samuel Kitchen intended to claim the land, deponent heard of Samuel Kitchen's intention from a mulatto girl in Baldwin county, but deponent had heard before from more than one person of Samuel Kitchen's intention to claim the land; no one was present when the girl told deponent.

To the 13th cross interrogatory deponent says: He thinks he heard of Samuel Kitchen's claim as much as twenty years ago; does not recollect from whom he first heard it; deponent has heard Samuel Kitchen's son Samuel speak of his claim; does not recollect that he has heard the old man himself speak of it; deponent does not think he ever told Joshua of said claim or report before the conversation before alluded to with him.

To the 14th cross interrogatory deponent says: The persons mentioning said claim to deponent never specified to him the extent or boundaries of the claim.

To the 15th cross interrogatory deponent says: Joshua Kennedy did not, in alluding to the claim of Kitchen, specify its extent or boundaries.

To the 16th cross interrogatory deponent says: Joshua Kennedy always contended that the deed from Wm. E. Kennedy to James Innerarity was an imposition on said Wm. E.; cannot say how often he heard Joshua Kennedy speak of said deed or of Innerarity's claim; deponent used to hear Joshua and Wm. E. Kennedy jaw about it before the death of Wm. E. Kennedy.

To the 17th cross interrogatory deponent says: The conversation he has referred to of Joshua Kennedy respecting the claim of Samuel Kitchen took place after said Kennedy's return from Washington, sometime about 1837 or 1838, he does not recollect the date; deponent does not recollect how long after; deponent did not see said Joshua Kennedy pass through Stockton on his return home on that occasion.

To the 18th cross interrogatory deponent says: Joshua Kennedy only spoke of one deed from Wm. E. Kennedy to Innerarity; deponent does not recollect the date of this deed; thinks he never knew it; he has understood the property was in the neighborhood of Water and Dauphin streets, somewhere about Hitchcock's alley.

To the 19th cross interrogatory deponent says: Joshua Kennedy spoke of the deed to Innerarity as having been made by Wm. E. Kennedy while he was drunk, and this is the deed to which deponent has referred in giving this testimony; he knows of no other.

To the 20th cross interrogatory deponent says: He cannot say he ever heard Joshua say he did not know of the deed to Innerarity at the time of its execution, but deponent recollects hearing at home, when a boy, from some of the persons there, that Joshua did not know of it when it was executed.

To the 21st cross interrogatory deponent says: He recollects Joshua Kennedy having once quarrelled with Wm. E. Kennedy about Wm. E. having made a deed to Innerarity while he was drunk, but deponent does not know that Wm. E. had subsequently conveyed the same property to Joshua, nor does he know that any such conveyance to Joshua had any thing to do with the misunderstanding; he never heard any thing about any conveyance to Joshua having any thing to do with the misunderstanding; deponent does not recollect hearing of any conveyance of the same lands from Wm. E. to Joshua Kennedy, except that a deed of trust of a very large quantity of land was made from Wm. E. to Joshua Kennedy, and this same land may have been included in that deed of trust: deponent does not know whether it was or not; deponent does not recollect when the misunderstanding alluded to about the conveyance to James Innerarity occurred; at the time of this misunderstanding deponent recollects that Joshua Kennedy appeared to be very mad, and abused Wm. E. Kennedy a great deal about wasting his property, but deponent does not recollect what Wm. E. said in reply; deponent says he believes the conversation with Joshua Kennedy, before alluded to, did refer in part to the deed to Innerarity, about which they were quarrelling at the time before spoken of in this answer.

To the 22nd cross interrogatory deponent says: He knows of a conveyance from either Joshua or William E. Kennedy (he cannot say which) of lands in the city of Mobile to Samuel Kitchen, which he believes were the same included in the deed from Wm. E. Kennedy to James Innerarity; deponent does not know what grant it was which was conveyed to Samuel Kitchen, or under which said land was conveyed to Samuel Kitchen; deponent does not know the dates of any grants of said land.

To the 23rd cross interrogatory deponent says: He believes it possible that the claim of Innerarity, for the purpose of defeating which the deed was made to Samuel Kitchen, was the same one about which Wm. E. and Joshua Kennedy had the misunderstanding spoken of in the last two interrogatories; deponent cannot say positively as to this matter; he does not know what deeds were made from Wm. E. Kennedy to Innerarity; he only knows of one, and therefore infers that the one referred to in the two previous interrogatories was the same as that for the purpose of defeating which the deed to Samuel Kitchen was made.

To the 24th cross interrogatory deponent says: Joshua Kennedy did not state the particular means contrived to defeat the claim of Innerarity further than he has already stated, viz., by making the deed to Samuel Kitchen; deponent does not recollect of any thing having been said about the recording of the deed having been purposely delayed; deponent does not know whether Wm. E. Kennedy ever acknowledged either deed.

To the 25th cross interrogatory deponent says: He has already stated all the particulars of the contrivances to save the property from James Innerarity, so far as Joshua Kennedy stated them; the same thing is stated in deponent's answer to the cross bill referred to in this interrogatory.

To the 26th cross interrogatory deponent says: He understood this

contrivance to save the property was resorted to for the benefit of Wm. E. Kennedy's children; at the time of the conversation with deponent upon the subject Joshua Kennedy was the guardian of this deponent and of the other children of Wm. E. Kennedy, and of course deponent believed he was acting for their benefit.

To the 27th cross interrogatory deponent says: He left the settlement of his interest in the suit of the heirs of Wm. E. Kennedy against Joshua Kennedy's executors and heirs, to be entirely managed and arranged by John A. Campbell, esq'r, who was his lawyer in the case, and deponent was always satisfied with whatever arrangements Mr. Campbell made; the whole matter was finally compromised through Mr. Campbell, and deponent agreed to it.

To the 28th cross interrogatory deponent says: At the time of the settlement of said suit betwixt Wm. E. Kennedy's heirs and Joshua Kennedy's heirs and executors, deponent supposed the south line of the Orange Grove tract to run where Weekly's line runs, by the iron-bound stake; the Orange Grove Company now claim a part of the Shipper's press, saying that their line runs through a part of the shed and press; the Shipper's press and warehouse lie between the first and second streets north of St. Louis street; deponent does not recollect the name of the streets; deponent cannot say what suits there are now pending about this property.

The 29th cross interrogatory is now waived by request of Col. Aikin, for defence, and by consent of Mr. Jno. A. Campbell, for complainant.

To the 30th cross interrogatory deponent says: He does not know whether Wm. E. Kennedy always denied having made said deed to James Innerarity; does not think Joshua Kennedy, in his conversation before alluded to on the subject with deponent, spoke of it as a deed that Wm. E. Kennedy always denied having made.

To the 31st cross interrogatory deponent says: He is not aware that he knows any thing further that would be material to either party in this suit.

JOSEPH S. KENNEDY.

Sworn to and subscribed before me this 25th day of March, A. D. 1845.

THOS. A. HAMILTON,
Commissioner.

Jesse Carter.

On the 26th day of March, A. D. 1845, Jesse Carter, one of the witnesses named, came before me, Thomas A. Hamilton, one of the commission hereto attached, at the office of P. & T. Hamilton, in the city of Mobile; and the said Carter having been first duly sworn, did testify and depose as follows, to wit:

To the first interrogatory deponent answers and says: He never had any conversation with Joshua Kennedy in regard to any deed made to Samuel Kitchen.

To the 2nd interrogatory and 3rd interrogatory deponent says: He has already stated that he never had any conversations with Joshua Kennedy on the subject of any deed to Samuel Kitchen.

To the 4th interrogatory deponent says: He is not aware that he knows any thing of his own knowledge that would be material to either party in this suit.

Cross examined.

To the 1st cross interrogatory deponent answers and says: He does not know, but is inclined to believe, that there are other parties interested in the prosecution of this suit beside Sidney E. Collins; deponent cannot say who are the parties so interested besides Sidney E. Collins; deponent believes Wm. D. Primrose is interested in some way in the prosecution of the suit, but deponent does not know in what way. Primrose says he is employed to assist in getting evidence for carrying on the suit; deponent has been informed that Drury Thompson is interested in the prosecution of the suit, but deponent does not know how true this may be; four or five years ago deponent was repeatedly solicited by Primrose to join in bringing this suit, but deponent always declined having anything to do with the matter.

To the 2nd cross interrogatory deponent says: He never had any conversation with Joshua Kennedy on the subject of the deed to Kitchen, and never spoke of any such conversation in any answer in any former suit.

To the 3rd cross interrogatory deponent says: He recollects his answer in the case alluded to in this interrogatory. It was made of his own knowledge or belief.

To the 4th cross interrogatory deponent says: In his answer at time alluded to, he did not speak of the dates of any particular deeds.

To the 5th cross interrogatory deponent says: He has not deposed to any such conversation as seems to be alluded to in this interrogatory.

To the 6th cross interrogatory deponent says: He has already answered this interrogatory in substance.

To the 7th, 8th, and 9th cross interrogatories deponent says: He has already answered these interrogatories as full as he is able to do

To the 10th cross interrogatory deponent says: He never conversed with Joshua Kennedy on the subject of the deed, either to Samuel Kitchen or James Innerarity.

To the 11th cross interrogatory deponent says: His recollection of the dates of written instruments is middling.

To the 12th cross interrogatory deponent says: Samuel Kitchen never spoke to him on the subject of his claim.

To the 13th, 14th, 15th, 16th, 17th, 18th, 19th, 20th, and 21st cross interrogatories deponent says: He knows nothing further about any of the matters inquired of in these interrogatories than he has already stated.

To the 22nd cross interrogatory deponent says: He knows nothing about the matter inquired of in this interrogatory, except what the county records show.

To the 23rd, 24th, 25th, and 26th cross interrogatories deponent says: He knows nothing about the matter inquired of in these interrogatories.

To the 27th cross interrogatory deponent says: A compromise was

made by Mr. Campbell for the plaintiffs of the suit of the heirs of Wm. E. Kennedy against the heirs and executors of Joshua Kennedy. This compromise was agreed to on both sides, and the executors of Joshua Kennedy made a deed in pursuance of said compromise to the complainants.

To the 28th cross interrogatory deponent says: He cannot tell exactly where the south line of the Orange Grove tract was supposed to run at the time of the said compromise, except upon a diagram or map of that part of the city. The Orange Grove Company now claim the same south line as then, only running further eastward, viz., to the channel of the river; deponent cannot say exactly how much land said Orange Grove Company claim in which deponent has an interest; deponent is interested in the Shipper's Press [and] warehouse and the south line of the Orange Grove Company, which they claim, would pass through a part of both said press and warehouse; the Orange Grove Company have sued for part of the said press and warehouse, as included within their boundaries, and the suit is still pending.

To the 29th cross interrogatory deponent says: He has no recollection of having any conversation with the executors or heirs of Joshua Kennedy, with regard to the titles of the lands between St. Louis and St. Anthony streets, previous to the commencement of this suit; deponent says he has had conversations with Dr. Hastie and with Jos. G. Aiken and A. R. Meslier, about the titles to that property, since the commencement of this suit; but he does not know that he had anything material to communicate, or that he did communicate any thing material to them with regard to the titles.

To the 30th cross interrogatory deponent says: He never had any conversation with Joshua Kennedy on the subject.

To the 31st cross interrogatory deponent says: He is not aware that he knows anything further that is material to either of the parties in this suit.

J. CARTER.

Sworn to and subscribed before me this 26th day of March, A. D. 1845.

THOS. A. HAMILTON,
Commissioner.

J. Chigizola's testimony.

On the 28th day of March, A. D. 1845, Jacques Chigizola, one of the witnesses named, came before me, Thos. A. Hamilton, one of the commissioners named in the commission, at the residence of said Chigizola, in the city of Mobile, and having been by me first duly sworn, the said Chigizola testified and deposed as follows, to wit:

To the first interrogatory deponent answers and says: He did purchase some years since of Joshua Kennedy a lot of land on the north side of St. Anthony street, in Mobile; deponent thinks this was in the year 1822. The said lot of land is fully described in the conveyance from Joshua Kennedy to deponent, and a copy of said deed is now hereto attached, marked exhibit A, and deponent asks that the same

may be taken as part of his testimony; deponent cannot now say precisely what sum of money he paid for said lot of land, he knows it was as much as five hundred dollars, and presumes it was the amount specified in the deed just above referred to, viz., five hundred and sixty dollars; on reflection deponent says it was five hundred and sixty dollars; deponent does not know the boundaries of the Alexander Baudain claim.

To the 2d interrogatory deponent says: Joshua Kennedy told him the titles to said land purchased by him was good; this was when deponent purchased the land; in the year 1823, deponent went to Europe, and returned to Mobile in 1824; when he returned he found some person had fenced off a part of the land he had purchased, as before stated; deponent wanted to improve the land, but, finding some of the most valuable part of it (towards the river) fenced off in this way, deponent went to Joshua Kennedy, and told him he must take the land back and give deponent his money; Kennedy said he would take the land back, as he had promised, but he had not the money to give deponent, and finally the matter was arranged by his giving deponent another lot in the upper part of the city, in place of one half of the land before named, and the other half of said land deponent deeded to Joseph Krebs of this city; deponent and Joseph Krebs were interested together in the purchase of said land on St. Anthony street, but it was agreed that the deed should be made to deponent, and that deponent should afterwards convey to said Krebs; deponent conveyed to Mr. Krebs his half of said land, and the other half deponent deeded back to Joshua Kennedy; and a copy of each of these said last named deeds is now hereto attached, as exhibit B and C, and deponent asks that they may be taken as a part of his testimony; witness cannot say, positively, who put up the fence on his land that he has before spoken of, but he believes it was James Innerarity; at the time that deponent went to Joshua Kennedy to get him to take back the land, Kennedy said that he had a good title, but as he had promised he would take back the land if deponent wanted; the fence deponent has spoken of came down from the Orange Grove, and took off all of that part of deponent's fronting on the river; the fence was in the water on deponent's land.

To the 3d interrogatory deponent says: He thinks he never knew Sidney E. Collins, the plaintiff in this suit.

To the 4th interrogatory deponent says: He is not aware that he knows anything further that would be of benefit to either party in this suit.

Cross examined.

To the 1st cross interrogatory deponent says: He knows nothing about the line of the Baudain tract; witness cannot say positively, but he believes the fence before alluded to formed a part of the line claimed by the Orange Grove tract.

To the 2d cross interrogatory deponent says: He has already answered this interrogatory fully.

To the 3d cross interrogatory deponent says: This is the first time he

has heard of the Baudain claim to these lands; deponent believes the Orange Grove Company do claim the same lands which were taken in by the fence he has before spoken of; they did claim them a few years since; deponent does not know who now holds these lands.

To the 4th cross interrogatory deponent says: The manner in which the fence before alluded to ran was about as follows, viz:

[For plat see original]

The fence stood in the water; and Joshua Kennedy said to deponent that, instead of the fence holding the same course as before, after it struck the high-water mark it must stop there, and then run directly out to the channel.

To the 5th cross interrogatory deponent says: He does not know anything about Sidney E. Collins.

To the 6th cross interrogatory deponent says: He did see old Mr. Kitchen, of Baldwin county, putting up a fence in the northern part of the city, near the river; deponent understood Wm. H. Robertson had bought some land there from the corporation for taxes, and Mr. Kitchen gave deponent to understand that he, Kitchen, was fencing it in so as to keep Robertson out of possession; witness does not [know] whether Kitchen was fencing it in for himself, or for Kennedy, or for whom it was done; deponent cannot say exactly where said fence stood, but it was south of St. Anthony street.

To the 7th cross interrogatory deponent says: He believes Joshua Kennedy was persevering in the pursuit of land claims; believes he was well acquainted with the laws relating to land titles in Mobile, but deponent cannot speak of these matters except from his belief.

To the 8th cross interrogatory deponent says: He is aware of such a law; he heard it spoken of eight or ten years ago, amongst the citizens; thinks it would be apt to make other titles of less value.

To the 9th cross interrogatory he says: He never knew a street in Mobile called North Boundary street, and don't think any one could know what was meant by that term; deponent does not know what opinion was entertained by the people of Mobile, as to the meaning of this term, after the act of 1824 was passed.

To the 10th cross interrogatory deponent says: He does not know anything about the subject-matter of this interrogatory.

J. CHIGIZOLA.

Sworn to and subscribed before me, this 28th day of March, A. D. 1845.

THOS. A. HAMILTON, *Commissioner.*

On the *the* first day of April, A. D. 1845, John Fowler, one of the witnesses, came before me, Thos. A. Hamilton, one of the commissioners named in the commission, at the office of P. and T. Hamilton,

in the city of Mobile, and the said Fowler, having been first duly sworn, did testify and depose as follows:

John Fowler's testimony.

To the first interrogatory deponent answers and says: He never purchased land from Joshua Kennedy, at the time and within the bounds specified, nor does he know of any one else having purchased from him in that part of the city between 1820 and 1824.

To the 2d interrogatory deponent says: At one time Joshua Kennedy told him he had given four thousand dollars for a piece of land for Mr. Kitchen that was worth forty thousand dollars, alluding, as deponent knew from his conversation, to land within the boundaries described in the first direct interrogatory; deponent thinks this conversation occurred some time about the year 1829 or 1830; he cannot be positive as to the time; it might have been a year or so later.

To the 3d interrogatory deponent says: He never was acquainted with Sidney E. Collins, the plaintiff in this suit; he should not know him now if he were to see him; he does not know when or where said Sidney E. resided in Mobile, and knows nothing about his business or movements.

To the 4th interrogatory deponent says: He is not aware that he knows any thing further that would be material to either party in this suit.

Cross examined.

To the 1st cross interrogatory answers and says: He has always that the northern line of the Baudain tract ran somewhere near the Orange Grove, but cannot speak more definitely.

To the 2d and 3d cross interrogatories deponent says: He has not spoken of any such purchases from Joshua Kennedy.

To the 4th cross interrogatory deponent says: He was intimately acquainted with Joshua Kennedy, and used to have frequent conversations with him; in one of these conversations, Joshua Kennedy spoke, as deponent has before stated, of his having got or recovered (deponent does not recollect which word he used) land for four thousand dollars, for Mr. Kitchen, worth forty thousand dollars; the land to which Kennedy referred at the time, deponent has always believed was included in the boundaries specified in the first direct interrogatory.

To the 5th cross interrogatory deponent says: He knows nothing about Sidney E. Collins's movements.

To the 6th cross interrogatory deponent says: There [was] a sort of fence put up at one time, in the water, in the marsh in the upper part of the city, north of St. Louis street; deponent always understood it was put up by Joshua Kennedy, and it always appeared to deponent to have been intended to mark out some boundary line; deponent is under the impression it was intended for a boundary line between the Orange Grove tract and Joshua Kennedy's land, or land claimed by him; deponent cannot say whether it was north or south of St. Anthony street;

St. Anthony street has been laid out since that time; deponent thinks said fence must have been in a direction about from the northwest to the southeast; deponent thinks that fence was intended as a division line between the Orange Grove tract and some of the land claimed by Kennedy.

To the 7th cross interrogatory deponent says: Joshua Kennedy was very diligent in the pursuit of land claims; they were his constant study; deponent thinks there was no man better acquainted with the laws relating to land titles in the city of Mobile, than was Joshua Kennedy; he was vigilant as to what affected said titles.

To the 8th cross interrogatory deponent says: He is aware of the law of Congress referred to in the first part of this interrogatory; it was passed in the year 1824, and deponent heard of it very soon afterwards; it was spoken of by the citizens, and in the newspapers; deponent does not know that said law depreciated the value of other titles to front property on the water in Mobile.

To the 9th cross interrogatory deponent says: He does not recollect of any street in Mobile known by the name of North Boundary street; deponent thinks there could be no certainty as to what was meant by that term; after the passage of this law, deponent does not know that any of the citizens of Mobile attempted to say what was meant by North Boundary street; frequently heard it said there was no such street.

To the 10th cross interrogatory deponent says: He does know of the mayor and aldermen of Mobile having claimed the property referred to in this interrogatory. Their claim was founded on the act of Congress of 1824. They brought suit against Emanuel under said act. And deponent thinks this suit was to test the whole, but deponent thinks the suit was compromised in some way. Deponent thinks the suit was brought in 1837 or 1838, but cannot say positively as to the time. It might perhaps have been a little later.

JOHN FOWLER.

Sworn to and subscribed before me, this 1st day of April, A. D. 1845.

THOMAS A. HAMILTON,
Commissioner.

Charles L. Delage's testimony.

On the 11th day of April, A. D. 1845, Charles L. Delage, one of the witnesses named, came before me, Thomas A. Hamilton, one of the commissioners named in the commission, at the office of P. and T. Hamilton, in the city of Mobile, and having been first duly sworn by me, the said Delage testified and deposed as follows, to wit:

To the 1st interrogatory deponent answers and says: He is well acquainted with the location of lots and streets in Mobile. He has made frequent surveys in the city. He has been city engineer, and has prepared a map of the city.

To the 2d direct interrogatory defendant says: He has never seen the grant from the Spanish government to Joseph Collins of the land referred to in this interrogatory. A short time before Joshua Kennedy died, viz.,

about the year 1834, while deponent was surveying for said Joshua, he brought deponent a deed for said land from Alexander Baudain, but nothing was said at that time about any claim of said Collins to said land. A short time ago, there was placed in deponent's hands a diagram from which to draw the maps referred to in the complainant's interrogatories; and at the same time an agreement was read to and shown to deponent about the land referred to, viz., land south of the Orange Grove tract, and between Royal street and the river, which said agreement had been made between Joseph Collins and either William E. or Joshua Kennedy, deponent does not recollect which. That agreement bore date in 1820. It was an agreement with regard to the southern half of the property lying south of the Orange Grove tract, north of St. Francis street, and east of Royal street to the river, and was sold by William E. Kennedy to Samuel Kitchen by deed dated in the same year, 1820. Deponent now attaches hereto a map shewing the Alexander Baudain claim, as the same is claimed at the present day; the south half only of the said Baudain claim was included in the agreement, deponent has before mentioned, betwixt Joseph Collins and one of the Kennedys. The said map is now marked exhibit A, and deponent asks that it may be taken as a part of his testimony The said present boundaries of said Baudain claim are shown by the yellow lines on said map. In 1820, and for some years later, a good part of said property was under water, but the different marks of high and low water are shown by another map, which deponent has prepared, which he will attach upon his cross examination. Deponent now attaches hereto a map showing the squares south of St. Francis street, and west to Conception street, as the same now exist, and said map is now marked exhibit B to his testimony.

To the 4th interrogatory deponent says: The yellow lines on the map marked exhibit B show the boundaries of the Price tract; the red lines on this map (B) show the boundaries of the Baudain claim; the south *of* half of which was included in the agreement, deponent has before referred to, between Joseph Collins and one of the Kennedys. Deponent is not aware that he knows anything further material to this suit, unless it be that, about the year 1824, he went to see Samuel Kitchen about a negro woman he thought of buying from said Kitchen. Deponent then found said Kitchen in a sort of shanty on the south half of said Baudain tract; said Kitchen's wife was there also. Deponent saw furniture in the shanty as if some persons were living there, and he afterwards saw said Kitchen there several times, but cannot say said Kitchen lived there. Deponent believes said Kitchen only stopped there during his visit to the city from Baldwin county, where deponent thinks said Kitchen resided at that time.

Cross interrogatories.

To the 1st cross interrogatory deponent says: He has made surveys of the Orange Grove tract, the Thomas Price tract, and of the property included in the grant to Alexander Baudain. He now attaches hereto a

map, marked exhibit C, showing the boundaries of the Orange Grove tract of the Alexander Baudain grant, and of the squares east of Joachim street, and north of St. Francis street, to Bloodgood street. Said map and the remarks thereon made will show the high and low water marks of the south half of the Baudain tract, the boundaries of the Orange Grove, of the Alexander Baudain tract, and of the south half thereof.

To the 2d cross interrogatory deponent says: He has marked on said map the boundaries of the Price tract in that part of the city; they are shown by the light yellow lines, marked A, B, C, D, E, F, G, H, on said map, exhibit C. The high and low water marks are also shown by said map.

To the 3d cross interrogatory deponent says: All that is inquired of in this interrogatory may be readily seen by an examination of the map attached, marked exhibit C, and which is prayed may be taken as a part of deponent's testimony.

To the 4th cross interrogatory deponent says: This may be readily seen by reference to the map, exhibit C.

To the 5th cross interrogatory deponent says: The two lots inquired about in this interrogatory are both laid off on the map, exhibit C, and both colored blue.

To the 6th cross interrogatory deponent says: He has made surveys of the marsh east of Royal street, and north of St. Louis, to ascertain its depth. In 1830, deponent says, the depth of water on the land from St. Louis street to the Orange Grove south line, and from the south line of the Orange Grove to Bloodgood street, commencing at fifty feet east of Royal street on the west, would not have averaged less than seven feet. The numbers on the map, then, (3) (5) (7) (10) (11.6) show the depth of water on the squares, respectively, so marked, and also of the squares north and south of those so numbered. All the squares in a direct line north and south of the square numbered (3) averaging three feet in depth of water by actual survey, and so also of those marked with the other numbers above stated.

To the 7th cross interrogatory deponent says: In 1829 and 1830, the property was not filled up on the squares on the south side of St. Louis street.

To the 8th cross interrogatory deponent says: The south half of the Baudain tract contains 256,806 superficial feet, as shown by the map, exhibit C. That portion of the Orange Grove tract lying east of Royal street, and included between the Baudain tract and Bloodgood street, and bounded east by Front street, is very nearly ten times as large as the south half of the Baudain tract. The southern line of the Orange Grove tract, marked on map C, lies 222 feet north of the southernmost line of the Alexander Baudain tract on Front street.

To the 9th cross interrogatory deponent says: The depth under the level of St. Louis street of that part of the south half of the Baudain tract where Water street now runs, would average about five feet in the year 1830. The depth where Commerce street now runs was then about ten feet, or ten feet and a half. The depth where Front street

now runs was then on an average about eleven feet six inches. The average depth of filling up then required on this property, from Royal to Front street, in order to bring it to the present level of St. Louis street, was about seven feet. The whole of the south half of the Alexander Baudain tract would have required, in the year 1830, about one million seven hundred and ninety-seven thousand six hundred and forty two cubic feet of filling up, in order to bring it to the present level of St. Louis street.

To the tenth cross interrogatory deponent says: He knows that Joshua Kennedy had a large part of the south half of the Alexander Baudain tract filled up. He knows of filling up done there by Joshua Kennedy in the year 1834. Deponent does not recollect whether Joshua Kennedy did any filling up on said land before the year 1834. Deponent has already stated that in 1830 there were about one million seven hundred and ninety-seven thousand six hundred and forty-two cubic feet of filling up that would have been necessary on the south half of the Baudain tract; in order to reclaim it from the water. This, at three cents per cubic foot, would make the whole cost of filling up said south half fifty-three thousand nine hundred and twenty-nine dollars and twenty-six cents. Three cents per cubic foot is as low as deponent knows filling up ever to have been done, and he knows Joshua Kennedy paid as high as four or four and a quarter cents per cubic foot for filling some portions of the same tract. Deponent thinks he paid the last mentioned price to James Keho for some filling up, and also to one Byrne. Deponent is not positive it was to them, but he thinks so.

To the 11th cross interrogatory deponent says: He thinks it would cost double, or perhaps three times as much in proportion to fill up a lot of marsh property of 50 feet by 100 feet, that it would cost to fill up a whole square, (provided the square were surrounded by streets previously filled up.) One lot of this size near the river, it would have been very difficult to have fill up, because the water being too deep betwixt it and dry land for carts to pass, the dirt would have to be carried on board of boats to the place where it was wanted, and after it was got there, a good deal of trouble and expense would be necessary, in order to prepare some sort of a barrier in which to confine the dirt thrown in so as to prevent its spreading, and being washed away. Joshua Kennedy, when he was filling up, bought flat boats and sunk them, in order to preserve the dirt where it was placed, and prevent its spreading, and being washed away. It would be much less trouble and expense to fill up a *a* square confined on all sides by streets already filled up, than to fill up land under other circumstances; but deponent thinks that even then it could not have been done for less than three cents a cubic foot. That is the lowest price that has been paid for filling up from the year 1836 to the present time, as deponent believes. Deponent thinks the cost of filling up a lot of 50 feet by 100 feet, under the circumstances, would have cost nearly as much as the lot was worth, after it was filled. On reflection, deponent says, he thinks a single lot of 50 feet by 100, would cost about two thousand dollars for fill-

ing up, and it would depend entirely on its location what it would be worth afterwards. Deponent is not able to state what has been the value of a lot of property in that part of the city, of the size of 50 feet by 100 feet, at any particular time since the year 1834.

To the 12th cross interrogatory deponent says: He has already this interrogatory in substance.

To the 13th cross interrogatory deponent says: He believes he has already stated all he knows that would be material to either party in this suit.

CH. L. DELAGE.

Sworn to and subscribed before me, this 11th day of April, A. D. 1845.

THOS. A. HAMILTON, *Commissioner.*

Mrs. Mary Rain, one of the witnesses, came before me, Thos. A. Hamilton, one of the commissioners, at the residence of Cornelius Rain, her husband, in the city of Mobile, on the 12th day of April, A. D. 1845; and the said witness, having been first duly sworn, did testify and depose as follows:

Mrs. M. Rain's testimony.

To the 1st interrogatory deponent answers and says: She was acquainted with Joseph Collins, the brother of the plaintiff, in his lifetime. Said Joseph died at the house of deponent's father, in Jackson county, Mississippi. Deponent thinks he died in 1819 or 1820. She is under the impression it was in 1819.

To the 2d interrogatory witness says: She was acquainted with the plaintiff's brother George. Said George went to Texas a number of years since, as deponent has always understood; and deponent has frequently seen persons from Texas, within the last year or two, who were acquainted with said George; and deponent has always understood from them that he was dead. Deponent never inquired particularly where said George was when he died; but she is under the impression he had gone on some expedition beyond Texas, and died while absent. Witness first heard of George's death some time within the last two years, and she thinks his death took place within the two years last past; but she cannot be positive as to the precise time of his death.

To the 3d interrogatory deponent says: She does not know that she knows anything further material to the parties in this suit.

Cross examined.

To the first cross interrogatory deponent says: She thinks her husband was the first person who told her he had heard of George Collins' death. She has since heard that he was dead, frequently, from persons who have come from Texas within the last year or two. Deponent does not recollect now the particular names of individuals who have told her of the death of said George. She has heard it frequently, and from various persons.

To the 2d cross interrogatory deponent says: She thinks it was some

two or three years before the death of Joseph Collins that he was received into the family of her father. Deponent cannot be certain as to the age of said Joseph at the time he was received into her father's family. She thinks he must have been about ten years old; at the time of his death he may have been eleven or twelve. He was a sickly child, and it was hard to tell his age.

To the 3d cross interrogatory deponent says: She does not recollect the precise year of the death of the plaintiff's father. It was after the year 1810. Deponent thinks Joseph Collins, the brother of the plaintiff, must have been very young at the death of his father, if he was alive at all; but she cannot say how old he was at that time. It is possible he may have been born after the death of his father, and deponent is really inclined to believe this was the fact.

To the 4th cross interrogatory deponent says: She is not aware that she knows anything further that would be material to either party in this suit.

M. A. C. RAIN.

Sworn to and subscribed before me, this 12th day of April, A. D. 1845.

THOS. A. HAMILTON, *Commissioner.*

Sidney Smith's testimony.

Sidney Smith, one of the witnesses, came before me, Thomas A. Hamilton, a commissioner named in said commission, on the 15th day of April, A. D. 1845, at the office of said Smith, in the city of Mobile; and the said Smith, having been duly sworn by me, did testify and depose as follows:

To the first interrogatory he answers and says: He knows the land designated in this interrogatory. He has known it for the last ten or twelve years. He did not take much notice of real estate before that time.

To the second interrogatory he says: He cannot tell the value of said land in 1829 and 1830. He thinks it would have been worth at least a hundred thousand dollars, as vacant property, in 1844.

To the third interrogatory he says: His recollection of this property, from 1828 to 1832, is not very accurate. He cannot testify as to any sales made from said property during those years.

To the fourth interrogatory deponent says: He knows very little of the issue in this suit, and cannot state anything further, so far as he is aware, that will benefit either party.

Cross examination.

To the first cross interrogatory deponent answers and says: He was a bookseller in this city in 1829 and 1830. The firm was Odevine & Smith. He continued the said business four or five years later, and changed his business in the winter of 1836.

To the 2d cross interrogatory deponent says: He became the agent of Jonathan Hunt in the winter of 1836 and 1837. He had previously

had some few operations in real estate. Since deponent became the agent of Jonathan Hunt he has frequently interchanged views with him as to the value of real estate.

To the 3d cross interrogatory deponent says: He has no interest in this suit, and has no knowledge of the controversy from which he can state who are the parties interested in carrying it on.

To the 4th cross interrogatory deponent says: No proposition has been made to him to take an interest in this suit, and he does not know who are the parties interested.

To the 5th cross interrogatory deponent says: He knows nothing as to the subject-matter of this interrogatory.

To the 6th cross interrogatory deponent says: The southern line or boundary of the Orange Grove tract has been a matter of suit in its extension east to the channel of the river, and suits of ejectment have been had which went to test the proper location of said line, and also the propriety of its extension to the channel of the river. Deponent thinks said Orange Grove Company have claimed that their southern line should be extended to the channel of the river; and deponent thinks, if so extended, the line would interfere with a small portion of the ground south of St. Anthony street and east of Commerce street. The suits pending are of common notoriety on the dockets of this county, but deponent does not recollect all the names of the parties.

To the 7th cross interrogatory deponent says: The answer to the last interrogatory is as good an answer as he can make as to the contentions between the Orange Grove and the Price grant. Deponent acts as the agent of some of the owners of the Orange Grove, viz., George Poe, Jonathan Hunt, and F. Griffin, &c.

To the 9th cross interrogatory deponent says: The owners at the present time, and for the last two or three years, of the Orange Grove, have been, and are, Jonathan Hunt, J. Hagan, J. Bloodgood, the Girard Bank, the U. S. Bank, the Decatur Bank, A. Gordon, H. Bright, F. Griffin, J. Hopkins, Du Bose and Kibbe, and the Mobile Bank.

To the 10th cross interrogatory deponent says: He has usually acted as the manager of the Orange Grove affairs with the advice of some of the proprietors.

To the 11th cross interrogatory deponent says: He does not know.

To the 12th cross interrogatory deponent says: He cannot answer as to the value of these lands in 1829 and 1830; when he speaks of their value in 1844, he means their cash value.

To the 13th cross interrogatory deponent says: He thinks the average length of credit given on sales of lands in this city, from 1830 to 1840, was about eighteen months.

To the 14th cross interrogatory deponent says: The sales made from 1830 to 1840, and which he has stated to have been made on an average credit of about 18 months, were made at estimated cash prices; the interest being always embodied at 8 per cent. from the day of sale.

To the 15th cross interrogatory deponent says: He cannot well say; he thinks these lands have generally been assessed higher than their

real value by the assessors of taxes, say since 1840; he thinks they have been assessed higher than they would sell for for cash; does not believe that the assessors assessed higher, on a plan or rule, than what the property was worth, although their estimate has frequently been higher than that at which witness would have valued them.

To the 16th cross interrogatory deponent says: He cannot well tell; the prices now, as far as witness knows, are very much according to what income can be realized from the property per annum, having reference to a low rate of per cent. per annum.

To the 17th cross interrogatory witness says: He thinks the main cause of the improvements specified were the high rents obtainable in the localities specified; deponent's impression is that several houses and warehouses, east of Royal street and north of St. Louis street, were built before, or in the year 1836, or not since 1836, viz: Emanuel and Gaine's warehouse, Kibbe's warehouse, lever press and warehouse, the building where Redwood's foundry now is, the building now occupied by Bull and Files, and those now used by the State press.

To the 18th cross interrogatory deponent says: He was not present at that sale.

To the 19th, 20th, 21st, and 22d cross interrogatories deponent says: He cannot answer.

To the 23d cross interrogatory deponent says: It is very likely, but he does not know.

To the 24th cross interrogatory he says: It is probable property in the upper part of the city may have commenced rising immediately after the sale referred to. Real estate reached its highest point here about the year 1836.

To the 25th cross interrogatory deponent says: The first public sale by the Orange Grove company was made on the 26th May, 1835; as near as deponent recollects it included all the lots north of the recognised boundary of the Orange Grove, south of Adams street, west from the river to St. Joseph street, thence north to Lipscomb street, thence west to Jackson street. That sale amounted to about four hundred and fifty thousand dollars.

To the 26th cross interrogatory deponent says: The second sale was made by the Orange Grove company on the 6th May, 1836, and embraced the property north of the property last mentioned, extending as far north as Bloodgood street, and west from the river to Lawrence street; it amounted to about eight hundred thousand dollars

To the 27th cross interrogatory deponent says: There was no other sale.

To the 28th cross interrogatory he says: He cannot tell.

To the 29th cross interrogatory witness says: Sales of some forty-eighth parts of the Orange Grove tract were made as alluded to in this interrogatory; they sold at about twenty-four thousand five hundred dollars each forty-eighth part.

To the 30th, 31st, and 32d cross interrogatories deponent says: He cannot tell.

To the 33d cross interrogatory deponent says: He cannot answer the first part of this interrogatory. It is difficult to say what would have been the expense, since 1830, of maintaining those wharves; a wharf now-a-days from the barrier out, costs about seventeen dollars ($17) per square of 100 feet. Deponent does not know what wharves used to cost.

To the 34th cross interrogatory deponent says: He does not recollect.

To the 35th cross interrogatory he says: He does not recollect.

To the 36th cross interrogatory deponent says: Commerce was a street, extending the whole front of the city; in 1829 and 1830 cotton was mostly received between St. Louis and Government streets; the steamboat landings were generally between what is now O'Brien's wharf and Jones's wharf; about a hundred thousand bales of cotton came to Mobile in 1829 and '30; at that time the population was about 3,000; believes the population now to be about 12,000; and about 500,000 bales of cotton are received here per annum; this is the best answer to this interrogatory that deponent can make.

To the 37th cross interrogatory deponent says: He thinks he knows of some persons who prophecied a long time ago as great prosperity for Mobile, and as much up town progress, as has ever been realized.

To the 38th cross interrogatory deponent says: His impression as to what Mobile was in 1829 is, that it was considered by all a smart place, destined to be an important sea port.

To the 39th cross interrogatory deponent says: He does not know enough about this matter to answer satisfactorily.

To the 40th cross interrogatory deponent says: In his answer to the 17th cross interrogatory he stated his impression of the buildings in that part of the city before or in 1836; the planters', factors', and shippers' presses, and very nearly all the warehouses north, excepting those named in answer 17, have been built since 1836, and will store about 160,000 bales of cotton; deponent cannot answer more in detail.

To the 41st cross interrogatory deponent says: He does not know; rumor said the mayor and aldermen did sue, but without success.

To the 42d he says: He does not know.

To the 45th cross interrogatory deponent says: He knows but little in detail of the matters in controversy, and he has answered according to the best of his recollection. SIDNEY SMITH.

Sworn to and subscribed before me, this 15th day of April, A. D. 1845.

THOS. A. HAMILTON, *Com'r.*

J. Bloodgood's testimony.

I caused *John Bloodgood*, one of the witnesses, to come before me, Thomas A. Hamilton, one of the commissioners, on the 15th day of April, A. D. 1845, at his office, in the city of Mobile; and the said Bloodgood having been duly sworn, did testify and depose as follows:

To the 1st interrogatory deponent says: He knows the tract of land designated; he has known it for the last twenty years.

To the 2d direct interrogatory deponent says: He should think it was worth, or would have sold for, twenty-five or thirty thousand dollars, equal to cash in 1829 or 1830; thinks it was worth about one hundred thousand dollars in cash, in 1844, without the buildings and improvements upon it.

To the 3d interrogatory he says: There was a sale of about ninety-two feet front on Royal street, and running through to the channel of the river, on the south side of St. Louis street, for cash, as he thinks, for ten or twelve thousand dollars; he thinks this sale was made in 1828.

To the 4th interrogatory he says: He cannot answer further unless expressly interrogated.

Cross examination.

To the 3d cross interrogatory witness answers: He has no interest in the event of this suit, and does not know who is interested (if any one) besides Sidney E. Collins in prosecuting this suit.

To the 4th cross interrogatory deponent says: Wm. D. Primrose once asked him to take an interest in this suit; he cannot answer further.

To the 5th cross interrogatory deponent says: He knows nothing as to the subject matter of this interrogatory.

To the 6th cross interrogatory deponent says: There have been some disputes as to the south line of the Orange Grove tract, and there have been some suits in court about the same, but deponent cannot now state particularly who were all the parties to those suits; if the southern line of the Orange Grove Company, as claimed by them, *were* extended to the channel of the river, it might take off some of the ground south of St. Anthony and east of Commerce street.

To the 7th cross interrogatory deponent says: He is interested in the Orange Grove tract, being one of the owners thereof.

To the 9th cross interrogatory deponent says: He does not recollect the names of the owners of the Orange Grove tract; there is a number of them.

To the 10th cross interrogatory deponent says: Sidney Smith has had something to do with the management of the affairs of the Orange Grove recently.

To the 11th cross interrogatory deponent says: He cannot form a precise estimate of the value of the property designated.

To the 12th cross interrogatory deponent says: He has already answered this interrogatory in substance.

To the 13th cross interrogatory deponent says: The average length of credit for land sales in Mobile, from 1830 to 1840, he thinks was about 18 months.

To the 14th cross interrogatory deponent says: He thinks the sales, during those years, were considered the same as cash sales; interest was usually, if not always, added until the time for payment.

To the 15th cross interrogatory he says: For several years past, he thinks property has been assessed higher for purposes of taxation than it could have been sold for for cash.

To the 16th cross interrogatory he says: He cannot very well say; he thinks improved real estate does not yield a large annual return or per centage at the present time upon its estimated value.

To the 17th cross interrogatory deponent says: He thinks the improvements up town were principally owing to the high rents paid for buildings in that part of the city; witness thinks there were a number of buildings up town, built before, or in the year 1836, and he may enumerate Emanuel and Gaines' warehouse, the lever press and warehouse, Kibbe's warehouse, the building now occupied by Bull & Boardman, the one where Redwood's foundery now is, the buildings used by the State press, &c.

To the 18th cross interrogatory deponent says: He was present at the sale of the Orange Grove in 1831; he thinks the terms of sale were, a part cash, and the balance in 1, 2, and 3 years, with interest; deponent was the best bidder for said property, and it was knocked down to him at forty thousand dollars.

To the 19th cross interrogatory witness says: The parties principally interested in the purchase of the Orange Grove tract were Henry Hitchcock, Jonathan Hunt, P. McLoskey, and deponent; he believes they were all interested in the purchase, chiefly because they considered it a good investment; it is difficult to say, however, what may have been the motives of all the buyers.

To the 20th and 21st cross interrogatories deponent says: He cannot say.

To the 22nd cross interrogatory deponent says: He knows all the parties interested in the purchase of the Orange Grove, with himself, were well satisfied with their purchase, inasmuch as they could easily have obtained a profit or advance on their own bid of twenty thousand dollars within twenty minutes after the bidding closed.

To the 23d cross interrogatory deponent says: He thinks it very probable such sales did take place, but he cannot say positively.

To the 24th cross interrogatory he says: Very likely property in the upper part of the city, and on the water, did commence rising very soon after the purchase of the Orange Grove as aforesaid; property reached its highest value in 1836.

To the 25th cross interrogatory deponent says: He believes the first sale by the Orange Grove Company took place in May, 1835.

To the 26th cross interrogatory: He thinks the second sale was about a year afterwards.

To the 27th cross interrogatory he says: There were only two sales.

To the 28th cross interrogatory witness says: He thinks the prices of property had risen nearly a hundred per cent. in that period.

To the 29th cross interrogatory deponent says: He has heard of some sales of forty-eighth parts of the Orange Grove tract, at from $25,000 to $27,000 for forty-eighths part.

To the 30th cross interrogatory deponent says: He thinks these lots began to be sold by the front foot at the first Orange Grove sale; cannot say

who was the author of that "ingenious invention;" thinks it probably had several fathers.

To the 31st cross interrogatory deponent says: He cannot say.

For answer to the 32nd cross interrogatory, deponent craves leave to refer to his answer to the 2nd direct interrogatory.

To the 33d cross interrogatory deponent says: It is difficult to answer; a wharf at the present time would cost about seventeen dollars per square of 100 feet; cannot say what would have been the cost in years long past.

To the 34th cross interrogatory witness says: He does not recollect very accurately.

To the 35th cross interrogatory deponent says: He does not recollect.

To the 36th cross interrogatory witness says: Cotton was landed along the whole front of the city at that time; the steamboat landings were generally from what is now O'Brien's wharf to Jones' wharf; in 1829 and '30, the population of Mobile, deponent thinks, was about 5,000, and about 100,000 bales of cotton were received here per annum; now, deponent thinks, there are about 12,000 people here, and the receipts of cotton reach somewhere about 500,000 bales.

To the 37th cross interrogatory deponent says: Many years ago a good many people entertained very sanguine hopes of the future prosperity of Mobile, and particularly looked forward to its up town progress.

To the 38th cross interrogatory deponent says: He thinks the general impression in 1829 was, that Mobile was destined to be a place of considerable importance.

To the 39th cross interrogatory deponent says: He does not know.

To the 40th cross interrogatory witness says: He has already answered as to what buildings were standing in that part of the city before or in 1836, as well as he recollects, the Planter's, Shipper's, and Factor's presses, and very nearly all the warehouses, except those heretofore named in the answer to the 17th cross interrogatory, have been built since 1836, and will store somewhere not a very long way short of 200,000 bales of cotton, as he thinks.

To the 41st cross interrogatory deponent says: He has understood the mayor and aldermen did commence suit, but failed.

To the 42d cross interrogatory witness says: He does not know.

To the 45th cross interrogatory he says: He believes he has stated pretty much all he knows about these matters.

JOHN BLOODGOOD.

Sworn to and subscribed before me, this 15th day of April, A. D. 1845.

THOS. A. HAMILTON,
Commissioner.

George Huggins.

George Huggins, one of the witnesses, came before me, Thos. A. Hamilton, a commissioner named in said commission, on the 17th day of April, A. D. 1845, at the office of P. & T. Hamilton, in the city of

Mobile; and the said Huggins, having been duly sworn by me, did testify and depose as follows.

To the 1st direct interrogatory deponent says: A parcel of property, bounded east by the channel of the river, south by St. Louis street, west by Royal street, and north by St. Anthony street, deponent thinks was probably worth about thirty thousand dollars in the years 1829 and 1830; deponent thinks, in 1829 and 1830, there was a wooden building and a wharf on the said property; there may have been other improvements at that time, but deponent does not recollect any others; deponent thinks these improvements may have been worth about two thousand dollars at that time.

To the 2nd interrogatory deponent says: He never had but one conversation with Joshua Kennedy on the subject of that land; that occured in the latter part of 1829, or early in 1830, to the best of deponent's recollection; Joshua Kennedy was at the time busy about the survey; witness thinks he was laying off the northern boundary; the ground was low where he was at the time, and Joshua Kennedy remarked the property may not be of any great value now, but it will be hereafter, or words to that effect.

To the 3d interrogatory witness says: He does not recollect any sales of property in that vicinity in 1829 and 1830; the city was extending up town rapidly; witness thinks Water street was extended as far north as St. Louis street at that time; the improvements in the upper part of the city did greatly increase after the fire in 1827; the principal part of the business, after that time, was done above Dauphin street.

To the 4th interrogatory deponent says: When he first knew this property, he understood it belonged to the heirs of Collins; deponent was well acquainted with George Collins, one of the said heirs; and said George told deponent, at one time, that he had sold out to Joshua Kennedy; deponent does not recollect the year when he told him so; subsequently Joshua Kennedy was in possession, and always exercised ownership over it; witness thinks there was a wharf on the property, or in front of it; deponent thinks said wharf might have rented, in 1829 and 1830, and afterwards, for seven or eight hundred dollars a year; witness thinks this would have been a high rent for it in 1830; it was not kept in good repair, and not a great deal used.

To the 5th interrogatory deponent says: He has already stated there was a wooden house on said land; this house was occupied by Joshua Kennedy and his negroes for a number of years; it appeared to be under the control of Kennedy; this house was between Royal and Water street, a good deal nearer Water than Royal street, and north of St. Louis, as witness thinks.

To the 7th interrogatory deponent says: He cannot say that he ever had any acquaintance with Sidney E. Collins, the plaintiff, until very recently; he thinks he knew him here when they were boys together, but he lost sight of him for a long time; deponent does not know how long Sidney E. Collins resided here before moving away, nor does he know when he removed from this State.

To the last interrogatory witness says: He is not aware that he knows any thing further that would be material.

Cross examined.

To the 1st cross interrogatory deponent says: He is not himself interested in the prosecution of this suit, and does not know who is, only he supposes the plaintiff to be.

To the 2nd cross interrogatory deponent says: He cannot state any thing more particularly than he has already done; with regard to the conversation with Joshua Kennedy before alluded to, deponent does not recollect who was present; there was some one present assisting Mr. Kennedy in the survey, but deponent has no recollection who it was; it may have been a negro.

To the 3d cross interrogatory deponent says: He first came to Mobile in the year 1821 or 1822; he resided here in 1829 and 1830; deponent was interested in a lot on the northwest corner of Royal and St. Michael streets, about the year 1829 or 1830, as he believes; this was about the first purchase of real property in Mobile in which deponent was ever interested.

To the 4th cross interrogatory witness says: He has resided in Mobile ever since 1830. He was engaged in selling merchandise until the year 1839. Deponent was elected sheriff in the year 1840, and continued in office for three years. Since that time he has been engaged in no particular business.

To the 5th cross interrogatory deponent says: In 1829 and 1830, he cannot say that money was very plenty in Mobile; his own business operations were not very extensive, and he had no occasion to take much interest in the money market. Deponent has no knowledge of operations in real estate in 1829 and '30. His partner, William F. Cleveland, made some real estate operations, but deponent had nothing to do with them.

To the 6th cross interrogatory deponent says: He thinks real estate, up town, did advance from 1829 to 1831, but how much deponent is not prepared to state.

To the 7th cross interrogatory deponent says: He does not recollect his attention having been called in 1829 and '30 to the value of the south half of the Baudain tract. Deponent says his attention was first particularly called to the value of this property soon after the purchase of a part of the same by Cleveland & Campbell from Joshua Kennedy, which purchase was in the year 1835.

To the 8th cross interrogatory witness says: He was not.

To the 9th cross interrogatory witness says: His estimate of the value of the property east of Royal, and north of St. Louis street, &c., which he supposes is the property meant by the "south half of the Baudain tract," is founded upon a sale of a portion of said property to Cleveland & Campbell. Deponent thinks this sale embraced 100 or 110 feet square on the north east corner of St. Louis and Water streets. Deponent thinks the date of said sale was about January, 1835. The

amount was ten thousand dollars, ($10,000,) and deponent thinks the whole amount was paid in cash, but is not positive. Deponent was a partner of Mr. Cleveland, (one of the purchasers at the time,) and he was apprised of all the particulars at the time, from hearing the parties speak of it.

To the 10th cross interrogatory deponent says: Nearly all of the city, south of St. Francis and east of Royal streets, as far down as Government street, he thinks was consumed by the great fire of 1827, except White's Hotel, (now known as the Waverly House;) the buildings on Royal street were chiefly burnt also.

To the 11th cross interrogatory deponent says: He cannot say exactly. It was several years after the fire of 1827 before all the burnt district was built up.

To the 12th cross interrogatory deponent says: He does not recollect when the first buildings were erected after the great fire of 1827, but in 1828 they commenced building north of St. Francis street. Deponent is now speaking of the brick buildings, and not of the wooden shanties that were hammered together forthwith.

To the 13th cross interrogatory deponent says: He does not recollect what buildings were put up east of Royal street in other parts of the city before the burnt district was built up.

To the 14th cross interrogatory deponent says: He thinks business had a tendency up town, both before and after the fire, and this tendency continues even to this day. Deponent thinks there were instances of persons who occupied small wooden buildings up town who moved down town when they could get good brick stores to go in; there were instances also of persons doing business down town who bought property up town and moved up.

To the 15th cross interrogatory deponent says: There was a greater demand for buildings in the neighborhood of St. Michael street, after the fire in 1827, than there was in 1829, but deponent thinks this was owing to the great scarcity of buildings immediately after the fire.

To the 16th cross interrogatory deponent says: That part of the land referred to, as in the south half of the Baudain tract, lying east of a line, running north and south, drawn across midway between Royal and Water streets, he should think was worth, in 1829 and '30, about three-fourths of the whole value of said south half.

To the 17th cross interrogatory deponent says: He thinks in 1829 and 1830 there was no particular fixed value attached to lands east of Royal and north of St. Louis street. If they had been offered for sale at that time witness has no doubt they would have brought fair prices. He does not know of their being offered for sale. Deponent does not know on what terms said land could have been leased for a term of ten years. Thinks land there could have been leased for twenty years on condition of filling up and building on it.

To the 18th cross interrogatory deponent says: He does not know.

To the 19th cross interrogatory deponent says: He really can't say.

To the 20th cross interrogatory witness says: He believes A. W. Gor-

don was a large owner of property lying between St. Michael and St. Louis streets, and between Royal street and the river. Believes Dr. Guesnard and Joseph Krebs owned a good deal of property there also. To the rest of this interrogatory deponent says, he does not know.

To the 21st cross interrogatory deponent says: He believes James Innerarity was largely interested in property up town in 1830, but he knows nothing as to his valuations of property there in those days.

To the 22d cross interrogatory deponent says: He knows of no such strips of ground, and it is unusual to lay off property in that way. Is not prepared to say what the value would be. Witness thinks that the value of the eastern half of the square lying north of St. Louis street, and between Royal and Water streets, would have been about fifteen thousand dollars in 1829 and 1830.

To the 22d cross interrogatory deponent says: He cannot say what was the comparative value of those two tracts of land in 1829 and 1830.

To the 23d cross interrogatory deponent says: He does not know what James Innerarity thought of the price brought by the Orange Grove tract in 1831. Deponent himself thought the price was exceedingly low, and so remarked at the time. He was present at the sale. Does not know how James Innerarity behaved immediately after the sale.

To the 24th cross interrogatory deponent says: The sale of the Orange Grove [tract] may have given an impetus to the rise of property up town. Thinks the operations were more extensive afterwards; property reached its highest point somewhere about the year 1835 or 1836.

To the 25th cross interrogatory deponent says: He cannot say. He supposes probably about a hundred thousand dollars.

To the 26th cross interrogatory deponent says: The property north of St. Louis street and east of Royal, was wanted for both improvements and for speculation. Improvements of that property did not commence after said property had begun to fall. The improvements of that region have been confined principally to the north side of St. Louis, and above, and the east side of Water street, and eastwardly. There are improvements also on the west side of Water street, and west thereof. Deponent cannot specify all the buildings erected in this region before 1837. There were some on the east and west side of Water street, north of St. Louis street.

To the 27th cross interrogatory deponent says: He cannot answer this interrogatory any more fully than he has already done.

To the 28th cross interrogatory deponent says: He has understood from the plaintiff that he is a citizen of Texas.

To the 29th cross interrogatory deponent says: He is not aware that he knows anything further material to either party.

G. HUGGINS.

Sworn to and subscribed before me, this 17th day of April, A. D. 1845.

THOMAS A. HAMILTON,
Commissioner.

John Ticknor.

John Ticknor, one of the witnesses, came before me, Thomas A. Hamilton, a commissioner named in said commission, on the 17th day of April, A. D. 1845, at the office of P. and T. Hamilton, in the city of Mobile. And the said Ticknor having been duly sworn, did testify and depose as follows:

To the first interrogatory he answers and says: He does not know the value of said land in 1829 and 1830. Deponent thinks there was an old house on said property, and also a wharf in those years.

To the 2d interrogatory deponent says: In 1834 or 1835, deponent had some conversation with Joshua Kennedy about lands, from St. Louis street up to the Orange Grove, and east of Royal street. He spoke of their belonging to him, and considered them very valuable. Deponent does not recollect that Joshua Kennedy said any thing more definite with regard to those lands.

To the 3d interrogatory witness says: He cannot speak with any degree of certainty as to any sales in that vicinity at so early a period; the prospect was that the city would extend upwards; the improvements on property in the upper part of the city did increase after the fire in 1827.

To the 4th interrogatory witness says: He thinks from the first he knew of said property it was claimed by Joshua Kennedy; witness does not know the yearly value of the wharf.

To the 5th interrogatory witness says: He does not know who inhabited the house on said land; witness thinks the old house was on the north side of St. Louis street, between Royal and Water streets; witness is under the impression said building was nearer Water than Royal street.

To the 7th interrogatory witness says: He never saw the plaintiff until to-day, that he recollects.

To the last interrogatory witness says: He is not aware that he knows anything further.

Cross examined.

To 1st cross interrogatory deponent says: He does not know anything about it.

To the 2d cross interrogatory witness says: He thinks said conversation with Kennedy took place at deponent's store in Mobile; cannot answer this interrogatory any farther.

To the 3d cross interrogatory he says: He resided in Mobile in 1829 and 1830; came to Mobile to reside in 1826; deponent first purchased real property in Mobile in 1834.

To the 4th cross interrogatory witness says: He has resided in Mobile, and sold goods here, since 1830.

To the 5th cross interrogatory witness says: He thinks money was rather scarce here in 1830; cannot answer as to the rest of this interrogatory; he doesn't know.

To the 6th cross interrogatory witness says: He thinks there was some

advance in the value of property, in Mobile, from 1829 to 1831; does not know what per cent.

To the 7th cross interrogatory witness says: He does not know anything about it.

To the 8th cross interrogatory witness says: He was not.

To the 9th cross interrogatory witness says: He *he* has not set a value upon said land in 1829 and 1830.

To the 10th cross interrogatory deponent says: The principal part of the city burnt in 1827 was Royal street, and east to the river, extending from St. Francis street on the north, to Conti street on the south; most of the buildings on the two squares west of Royal street, bounded by the same boundaries north and south, were also burnt; where is now the Waverly House and an old house this side escaped.

To the 11th cross interrogatory witness says: It is hard to say how long it was before the whole of the burnt district was built up again; a great many *temporary* buildings were erected in a few weeks afterwards; it was some years before it was permanently rebuilt.

To the 12th cross interrogatory witness says: He does not recollect where the first buildings were erected after the fire; witness thinks some of the first *brick* buildings after the fire were on the south side of Dauphin street, and between Water and Commerce [streets]; witness thinks the improvements principally extended north from that point, if anything.

To the 13th cross interrogatory witness says: He cannot specify them.

To the 14th cross interrogatory witness says: After the fire of 1827, people went wherever they could find a place to put their goods; houses were scarce, and when a tolerably good one could be got by a person he went into it wherever it was.

To the 15th cross interrogatory witness says: There is no doubt but what there was, because buildings elsewhere were much scarcer in 1827 than in 1829.

To the 16th cross interrogatory witness says: He does not know.

To the 17th cross interrogatory witness says: He is not able to say anything about this subject matter of this interrogatory.

To the 18th cross interrogatory witness says: He does not know.

To the 19th cross interrogatory witness says: He supposes probably lots on Dauphin and Water streets may be mentioned as having as much of a definite value attached to them as any part of the city, viz: all of Dauphin street, east of Royal, and say Water street, from Conti on the south up to St. Michael street, or above.

To the 20th cross interrogatory witness says: He thinks Wm. Jones and A. W. Gordon were principally interested in the property mentioned at that time; there was some filling up going on there at that time, and Gordon had something to do with it witness understood; witness does not know that they set a very high value on it at that time.

To the 21st cross interrogatory witness says: He understood James Innerarity was largely interested in property up town at that time; witness

does not know anything of said Innerarity's valuation of property, never having had any real estate dealings with him.

To the 22d 22*d* and 23d cross interrogatories deponent says: He does not know anything about the values, &c

To the 24th cross interrogatory deponent says: He never knew of the Orange Grove sale in 1831, having given any marked impulse to the rise of property up town; deponent thinks property all over Mobile reached its highest point about the year 1836.

To the 25th cross interrogatory deponent says: He does not know.

To the 26th cross interrogatory witness says: He thinks property north of St. Louis, and east of Royal street, was bought both for improvement and on speculation; witness thinks a great portion of the improvements on sa'd property have been erected since the same reached its highest point, but some had been erected previously; deponent cannot say when the improvements there commenced; they are pretty widely extended.

To the 27th cross interrogatory witness says: He cannot answer this interrogatory any more fully than he has already done.

To the 28th cross interrogatory witness says: He has already answered this interrogatory as fully as he is able to do.

To the 29th cross interrogatory witness says: He knows nothing farther about the matter. JOHN TICKNOR.

Sworn to and subscribed before me, this 17th day of April, A. D. 1845.
THOS. A. HAMILTON, *Commissioner.*

Cyrus Sibley's testimony.

Cyrus Sibley, one of the witnesses, came before me, Thomas A. Hamilton, a commissioner named in the commission, on the 18th day of April, A. D. 1845, at the office of P. & T. Hamilton, in the city of Mobile; and the said Sibley having been duly sworn, did testify and depose as follows:

To the 1st interrogatory witness answers and says: He never had any particular acquaintance with Joseph E. Collins; he saw him once in his lifetime, which deponent thinks was about the year 1808 or 1809.

To the 2d, 3d, and 4th interrogatories witness says: He knows nothing about the matter.

To the 5th interrogatory witness says: He knows the land lying between St. Louis and St. Anthony streets, and running from Royal street to the river; does not know whether it is a part of the Baudain claim or not; to the rest of this interrogatory witness says he knows nothing about it.

To the 6th and 7th interrogatories witness says: He is not aware that he knows anything farther as to these matters.

Cross examined.

To the 1st cross interrogatory witness says: He knows nothing about it.

To the 2nd cross interrogatory he says: He is under the impression, from having heard Mr. Joseph E. Collins spoken of frequently, that he did frequently visit Mobile from 1805 to 1811.

To the 3d and 4th cross interrogatories witness says: He does not know.

To the 5th cross interrogatory witness says: He does not know whether these lands were embraced in the Price grant or not; Joshua Kennedy did claim the land, but under what title witness does not know.

To the 6th cross interrogatory witness says: He knows nothing about it.

To the 7th cross interrogatory witness says: The value of these lands was very undetermined in 1829 and 1830; he should think marsh property up town was not in much demand in those years for business or improvements; and witness thinks property situated above St. Louis was not generally deemed very desirable at that time; witness thinks they commenced filling the land inquired about in the first direct interrogatory somewhere about the year 1830; witness is under the impression that said land was filled in by Joshua Kennedy; thinks Joshua Kennedy told him the corporation compelled him to do it; Joshua Kennedy did put some improvements on said property in the shape of a wharf or wharves and abutments, and filling up, as witness thinks; witness is under the impression, from having heard both Kennedy and Kitchen say so, that Kennedy sold a part of said land to Samuel Kitchen; and witness thinks said Kitchen put a wooden building and a wharf on said property, but witness cannot say positively that these improvements were made by Kitchen, and at his expense; previous to 1829 there had been a good deal of land on the water north of Dauphin street reclaimed from the river and built upon; witness thinks land had been reclaimed in this way as high as St. Michael street, by the year 1829 and 1830.

To the 8th cross interrogatory witness says: He has no very particular recollection of the lands north of St. Louis street, &c., in 1824 and 1825, more than that they were marsh land, a good portion of them, and subject to be overflowed at high tides.

Direct examination resumed.

To the first additional direct interrrogatory witness says: He was acquainted [with] Wm. E. and Joshua Kennedy in 1820, and for some years before and afterwards; witness thought there was a close intimacy betwixt them in their real estate interests.

To the 2nd additional interrogatory he says: It was the impression of witness, at the time that said Joshua and Wm. E. Kennedy were interested together in lands in Mobile and its vicinity.

To the 3d additional interrogatory witness says: Wm. E. Kennedy was intemperate in his habits; thought he depended a good deal on his brother Joshua for advice and counsel; does not think he was pecuniarily dependent on his brother by any means; he was intemperate and followed no regular business; he was a physician, but practised very little. The children of said Wm. E. resided, after his death, with

Joshua Kennedy; and witness thinks they did for several years before his death also.

To the 4th additional interrogatory witness says: He was acquainted with Samuel Kitchen; he was a millwright by occupation; in 1820 he resided up on the Tensaw river, in Baldwin county, at that time near to Kennedy's mill, or perhaps at it; Joshua Kennedy and said Kitchen lived close together about the years 1818, '19, '20, and '21, according to the best of deponent's recollection.

To the 5th additional interrogatory witness says: The estate of Samuel Kitchen, in 1820, was not large; thinks he owned no lands or slaves at that time.

To the 6th additional direct interrogatory witness says: He thinks that Samuel Kitchen spent a winter or so in Mobile while he was engaged, as witness thinks, in making the improvements already mentioned on the property north of St. Louis street.

To the 7th additional interrogatory witness says: He knows the property east of Water street and north of Dauphin; witness's impression has been that title to said property was derived from a Spanish grant to one of the Baudains; witness cannot say as to all the property, but he knows the titles to some of said property did pass through Joshua Kennedy in its way down to the present holders thereof; deponent does not know, he never heard, that any part of the property immediately north of Dauphin street, and east of Water, was claimed through Samuel Kitchen.

To the 8th additional interrogatory witness says: Joshua Kennedy was, during the last twenty years of his life, improving here, carrying on his saw mill, and attending to his land claims; he was laborious in the pursuit of land titles, and displayed great anxiety to possess himself of real estate.

To the 9th *cross* interrogatory witness says: The reputation of Joshua Kennedy for *Kennedy for* the dexterous management of land claims stood A, No. 1.

To the 10th additional interrogatory witness says: He knows of no acquisitions of real estate by Samuel Kitchen, except of the land between St. Louis and St. Anthony streets, and Royal street and the river, which witness has before alluded to, and which he understood from both Joshua Kennedy and Samuel Kitchen, said Kitchen had taken in payment of some money which said Kennedy owed him; deponent does not know the amount, nor does he recollect the year; said Kitchen has been a millwright and stock (cattle) keeper for the principal part of the last twenty years.

To the 11th additional interrogatory witness says: He is not aware that he knows any thing further which would be material to either party.

Cross examination resumed.

To the first additional cross interrogatory witness says: He is under the impression said Joshua Kennedy resided at his mill on the Tensaw

in 1820; Wm. E. was living either at Bon Secours or with his brother, he cannot say which; the intimacy of the relations betwixt Wm. E. and Joshua Kennedy, as to land claims, was principally with regard to the Price claim, as witness thinks; that was the great absorbing claim.

To the 2nd and 3d additional cross interrogatories witness says: He believes he cannot answer these interrogatories any more fully than he has already done.

To the 4th additional cross interrogatory witness says: Wm. E. Kennedy was always intemperate, from the time witness first knew [him,] (about 1808,) but he became more so in after years.

To the 5th cross interrogatory witness says: Wm. E. Kennedy was of a liberal disposition; but he does not think many persons had influence over him besides his brother Joshua; witness is under the impression that he heard Joshua say that William would get clear of his property; but cannot say positively he heard him say so.

To the 6th cross interrogatory witness says: He knows nothing about it.

To the 7th cross interrogatory witness says: Samuel Kitchen worked for Joshua Kennedy for years before 1820, viz., in building and overseeing his mill; witness cannot say who was the man that first built Kennedy's mills, but Kitchen rebuilt them after they were burnt during the war, and Kitchen rebuilt them also in 1819 or 1820, as witness thinks; he also superintended his mills for many years.

To the 8th cross interrogatory witness says: He has known Samuel Kitchen since 1814; his character is that of a plain, straightforward, industrious man; there is none more so.

To the 9th cross interrogatory witness says: He has already answered this interrogatory in substance; Samuel Kitchen did claim the lands, and witness thinks he built a house and wharf upon them, as before stated; does not recollect the date; does not know whether the house is still standing; thinks the remains of it are there still.

To the 10th cross interrogatory witness says: He thinks he did.

To the 11th cross interrogatory witness says: He cannot say anything further than already stated.

To the 12th cross interrogatory witness says: He never was interested in Kennedy's mills; to the rest of this interrogatory witness says, he cannot say, except that he never himself made out any account current of the profits of the mill, &c.

To the 13th cross interrogatory witness says: He heard of the act of Congress referred to very soon after its passage; deponent heard a good many of the citizens of Mobile speak of said law.

To the 14th cross interrogatory witness says: He has heard it said that the corporation of Mobile did claim the property north of St. Louis, and from Water street east to the river; never knew that the corporation sued for said property.

To the 15th cross interrogatory witness says: He never knew of such a street in Mobile at that time.

To the 16th cross interrogatory witness say: He thinks the act of Con-

gress alluded to did not depreciate the value of other titles to front property on Mobile, for the said act confirmed the titles to property on the water derived from Spanish grants.

To the 17th cross interrogatory witness says: Joshua Kennedy was well acquainted with the laws relating to land titles in Mobile; he was watchful as to his interests here, and most probably knew of said act of Congress.

To the 18th cross interrogatory witness says: He thinks Joshua Kennedy claimed about as much property down town as he did up town.

To the 19th cross interrogatory witness says: He knows that property; does not know the names of the present holders, and cannot state any thing more fully than he has already stated as to their title.

To the 20th cross interrogatory witness says: He has heard it said that Joshua Kennedy himself compromised with the city as to their claim to property lying east of Water street and south of St. Louis street, or quieted their claim in some way; but deponent knows nothing of it except from hearsay; deponent heard also some talk of compromises made by other persons, but deponent knows nothing of his own knowledge with regard to any of these matters inquired of in this interrogatory.

To the 21st cross interrogatory witness says: He does not know the handwriting of the paper marked exhibit A, attached to the interrogatories.

To the 22d cross interrogatory witness says: He is not aware that he knows any thing further that would be material to either party to this suit.

CYRUS SIBLEY.

Sworn to and subscribed before me, this 18th day of April, A. D. 1845.

THOS. A. HAMILTON,
Commissioner.

William Jones, junior's, testimony.

William Jones, junior, one of the witnesses, came before me, Thos. A. Hamilton, one of the commissioners, on the 18th day of April, A. D. 1845, at the office of P. and T. Hamilton, in the city of Mobile; and the said Jones, having been first duly sworn, did testify and depose as follows.

To the 1st interrogatory he answers and says: He is acquainted with the land referred to; he has known it since the year 1822.

To the 2d interrogatory witness answers and says: He thinks the value of that land, in 1829 and 1830, in cash, was about from eight to ten thousand dollars; in 1844, witness thinks said land was worth in cash somewhere about one hundred and fifty thousand dollars, without any improvements upon it.

To the 3d interrogatory witness says: He made a purchase himself of one-third of a lot, which was called the Company lot, having a front of 97 feet on Royal street, and running through on the south side of St. Louis street to the channel of the river, with the same width, about the year 1829, for four thousand six hundred dollars, on the following terms, viz., one-fourth cash, and the balance at one, two, and three

years, without interest, as he thinks; witness also purchased, in 1830, one-sixth of the same lot for three thousand dollars, on the same terms as to credit as in the purchase just named; witness did not consider said property worth what he paid for it, but he was almost compelled to purchase in order to extend and complete a warehouse which he had previously commenced on the south side of said property; witness does not know of any other purchases in that neighborhood at that date; the property he has spoken of as purchased by him was entirely unimproved.

To the 4th interrogatory witness says: He is not aware that he knows any thing further material to either party.

Cross examined.

To the 13th cross interrogatory witness says: He thinks the average of sales from 1830 to 1840 was for one-fourth cash, and the balance at one, two, and three years.

To the 14th cross interrogatory witness says: He cannot tell.

To the 15th cross interrogatory witness says: He thinks property in Mobile has been assessed higher by tax assessors for the last fifteen years than its cash value; for the last four or five years it has been assessed a good deal above its cash value, as he thinks; he has known some instances where it was assessed at double, and some even three times its cash value; witness cannot answer the rest of this interrogatory any more fully than he has already done.

To the 16th cross interrogatory witness says: He does not believe it does.

To the 17th cross interrogatory witness says: He thinks one cause of the improvements up town has been the impossibility of reselling without loss, which produced the necessity of improving to make the property productive; witness thinks the building on corner of St. Anthony street and Water street, where Redwood's foundry now is, was built before or in 1835, and also another on Water street, south of Redwood's foundry, built by Joshua Kennedy about the same time; witness thinks the balance of improvements were made in 1836, and since.

To the 18th cross interrogatory witness says: He was present at the sale of the Orange Grove in 1831; witness thinks the terms of sale were one-fourth cash, and the balance in one, two, and three years; does not recollect whether the credit payments were with or without interest; John Bloodgood was the best bidder for forty thousand dollars.

To the 19th cross interrogatory witness says: He thinks said purchase was made by what was called the down town company, composed of Judge Hitchcock, John Bloodgood, Jonathan Hunt, Philip Macloskey, and perhaps others; witness thinks the purchase of the Orange Grove was made for the purpose of preventing the town from going up, and thereby advancing the down town interest.

To the 20th cross interrogatory witness says: There was also an up town company formed to purchase said Orange Grove; this company consisted of A. W. Gordon, Joshua Kennedy, Joseph E. Sheffield, L. Mitchell, and deponent; James Innerarity was appointed to bid for this

company at the sale, and was limited to twenty five thousand dollars; but if any bids were made against him, he was to run the property up until the company told him to stop; he continued to bid until the property reached thirty thousand dollars, or thereabouts, when A. W. Gordon commenced bidding for the up town company, and ran it up to forty thousand dollars; Joshua Kennedy's valuation of the property was twenty-five thousand dollars; witness does not know what Kennedy thought of the price brought by the property.

To the 21st cross interrogatory witness says: There was an arrangement between the up town company and Joshua Kennedy as to the location of the boundary line between his land, on the river, and that of the Orange Grove tract; it was that the old Orange Grove line was to be followed until it struck the ordinary high-water mark of the river, and thence to run at right angles from the shore to the channel of the river.

To the 22d cross interrogatory witness says: He cannot say that he does know of such a case.

To the 23d cross interrogatory witness says: He does not know of any sales.

To the 23d cross interrogatory witness says: He thinks it was.

To the 24th cross interrogatory witness says: He thinks it did commence rising soon after said sale, and continued to rise until 1836, when it reached its highest point.

To the 25th, 26th, and 27th cross interrogatories witness says: He does not know.

To the 28th, 29th, and 30th cross interrogatories witness says: He does not know.

To the 31st cross interrogato*ries* witness says: He thinks, from 1830 to 1840, the average price for filling up water lots was about from $2\frac{1}{2}$ to 3 cents per cubic foot; Joshua Kennedy must have been at a great expense in filling up the property mentioned in the first direct interrogatory; cannot say how much.

To the 32d cross interrogatory witness says: The value of said property, in 1829 and 1830, was very uncertain, and far from fixed.

To the 33d cross interrogatory witness says: This property was scarcely in a condition to have been laid off and sold in lots of 50 by 100 feet in 1829 and '30; such lots would not then have been in much demand; such a lot, standing alone, could not have been filled up at that time without a great disproportion of cost, and it would have scarcely paid for the trouble and expense; some precaution must have been used to prevent the material used in filling from spreading or being washed away.

To the 33d cross interrogatory witness says: He thinks, judging from the other wharves, it would have cost from two to three hundred dollars per annum to keep each of the wharves in front of this property in repair; the cost of building one of the long wharves spoken of, witness thinks, was from four to five thousand dollars; the cost of one of the

present length would be about two to three thousand dollars; a wharf will last from four to five years on an average.

To the 34th cross interrogatory witness says: In 1829 and 1830, he thinks Water street extended to within about 80 or 90 feet of St. Louis street; the Union press was not then built; Jones's wharf in those days commenced about half way between Water and Commerce streets; that wharf was 50 feet wide and about 350 to 400 feet long.

To the 35th cross interrogatory witness says: The improvements on the ground south of where the Union press now is were, in 1829 and 1830, Gordon's horse-press and cotton warehouse; thinks Gordon's hydraulic press, &c., was built about 1828 or 1829; part of the ground north of St. Michael and east of Water street was filled up, in 1822, by Sewell; the rest of said property was filled up, about 1828 or 1829, by A. W. Gordon; the whole quantity filled up by Sewell and Gordon, as aforesaid, extended to about 130 feet north of St. Michael street, and running through from Water to Commerce streets; the wharf in front of said last named property was built by Sewell about the year 1822; there was a dock between this wharf and Jones's wharf, but it extended up only to about Commerce street; the space covered by this dock was filled up by deponent and L. Mitchell in 1829, as witness thinks.

To the 36th cross interrogatory witness says: In 1829 and 1830, a block of brick buildings, built by A. W. Gordon, on the north side of St. Michael street, were the highest of any up town east of Water street; Commerce street was in existence in 1829 and 1830; it extended as high as the block of Gordon's, just mentioned, but a number of lots below had not then been filled up, and in such places it could not be used as a street, of course; the cotton received at Mobile, in those years, was landed between Liverpool wharf and Government street; Liverpool wharf was about in front of St. Michael street, a little north of it; the steamboat landings were principally between St. Michael and Government streets, and business was principally transacted between them also; witness thinks the most northerly dry goods store in the city, at that time, stood between Dauphin and St. Francis streets; witness thinks about 80,000 or 100,000 bales of cotton were received here in the winter of 1829 and 1830; he cannot state what the population was at that time; the annual receipts of cotton now are about 500,000 bales, and the present population is about from 18 to 20,000, as witness should think.

To the 37th cross interrogatory witness says: He thinks the growth of the city up stream has far exceeded the expectations of people, generally, in 1829 and 1830; at that time it was scarcely expected that within 15 years such an increase would take place, either in the number of inhabitants or in the cotton receipts of the city.

To the 38th cross interrogatory witness says: He supposes Mobile should rather have been classed as a large commercial village, in 1829 and 1830, than as a very important commercial emporium and seaport.

To the 39th cross interrogatory witness says: The Union press was not built until 1831.

To the 40th cross interrogatory witness says: Four steam cotton presses, and a good many brick warehouses, (cannot state how many,) have been built north of St. Anthony street since 1830; they have all been built since 1836, he thinks; they can accommodate a hundred to a hundred and fifty thousand bales of cotton with storage he supposes; supposes from a half to three fourths of all the cotton that came to Mobile, in the winter of 1843 and '44, was stored and compressed north of St. Anthony street.

To the 41st cross interrogatory witness says: He understood the mayor and aldermen of Mobile did claim the front property described in 1st direct interrogatory, under an act of Congress; witness thought their claim was good, and a good many others thought so also; cannot say, of his own knowledge, that the city did sue Joshua Kennedy or his executors for this property, but understood they did.

To the 42d cross interrogatory witness says: Joshua Kennedy compromised with the city for a lot of seventy-six feet front on the river, lying between St. Michael and St. Louis streets; witness bought said lot from Joshua Kennedy, and was unwilling to complete the purchase until Kennedy had procured a release of their rights from the mayor and aldermen; the compromise took place in 1827, and Joshua Kennedy paid the city three hundred and fifty dollars for their claim; several others compromised with the city also.

To the 43d and 44th cross interrogatory witness says: He cannot say.

To the 45th cross interrogatory witness says: He is not aware that he *he* knows any thing further material to either party in this suit.

WM. JONES, Jr.

Sworn to and subscribed before me, this 18th day of April, 1845.

THO. A. HAMILTON, *Com'r.*

D. Robertson's testimony.

Daniel Robertson, one of the witnesses, came before me, Tho. A. Hamilton, one of the commissioners, on the 19th day of April, A. D. 1845, at the office of P. and T. Hamilton, in the city of Mobile; and the said Robertson having been duly sworn, did testify and depose as follows:

To the 1st interrogatory witness answers and says: He thinks the property in Mobile, commencing at Royal street on the west, and running through to the channel of the river, one square in width, and bounded north by St. Anthony and south by St. Louis street, was worth about twenty-five thousand dollars ($25,000) in 1829 and 1830; deponent does not recollect of any improvements on said property at that time, except an old house and a wharf; the house was not very old at that time.

To the 2d interrogatory witness says: He was once on the premises above named with Joshua Kennedy, when the conversation turned upon the subject of those lands; Joshua Kennedy remarked that Mr. Kitchen had a title to said property, but that it would eventually be of benefit to his (Kennedy's) children, or words to that effect; witness does

not recollect the precise date of this conversation, but thinks it was about in 1829 or 1830; thinks no one else was present; witness does not recollect any thing of the particulars of said conversation further than he has above stated; that was the substance of the conversation, as witness understood it at the time.

To the 3d interrogatory witness says: He does not recollect of any improvements or sales of property being made in that vicinity in 1829 and 1830; witness does not think there were many improvements at that time as high up as St. Louis street and east of Royal; there were wharves in front of the property as high up as St. Louis street; witness thinks there were some buildings erected immediately south of, or on the south side of St. Louis street about that time, viz., some of the buildings attached to Jones' press; cannot say that all the buildings now forming the Union (or Jones') press and warehouses were built at that time, but thinks a good part of them were built about that period; witness thinks there was also, in 1829 and 1830, a long wooden building standing on the wharf in front of what is now the Union press; does not recollect any other improvements in that immediate neighborhood; there was a number of buildings on St. Michael street at that time witness thinks; it was then generally believed pretty certain that the city would extend up stream; the improvements in the upper part of the city increased pretty rapidly after the great fire in 1827.

To the 4th interrogatory witness says: He recollects this property very well since about the year 1824; since that time Joshua Kennedy has been in the occupation and possession of it until his death, as witness believes; there was a wharf in front of said property, which witness thinks was finished about the year 1829; it took two or three years to build it; witness does not know what that wharf would have rented for in 1829 and 1830; thinks it might have rented at that time for seven or eight hundred dollars a year, but cannot say positively how much.

To the 5th interrogatory witness [says]: He has already stated his belief that there was a building on this land in 1829 and 1830; Joshua Kennedy and his negroes used to occupy it; thinks Joshua Kennedy had an office in it at that time, and previous thereto.

To the 7th interrogatory witness says: He supposes he probably saw the plaintiff when he was a lad, but has no recollection of it; his acquaintance with him is very limited; cannot say he ever saw him until yesterday to know him; has some recollection of having seen his countenance before, but cannot recollect where it was; does not know how long he resided here, nor when he removed from this State.

To the last interrogatory witness says: He is not aware that he knows any thing further material to either party in this suit, unless it be, that about the year 1824, as he thinks, he made use of a part of the land referred to in the 1st interrogatory, to frame a building upon; he thinks the place where he framed the building was a little north of St. Louis and on Water street, or to the eastward of it; it was not on the west side of water street, where deponent was at work at the time the ground was dry, except at very high tides; a little ways above this, and proba-

bly on the same premises inquired of, the land was marshy and covered with water; it was tolerably dry all the way up to Royal street, in a direct line from where deponent was at work.

Cross examined.

To 1st cross interrogatory witness says: He has no interest in the event of this suit, and does not know who is, except he supposes the parties on the record are.

To the 2d cross interrogatory witness says: He cannot state any thing further as to the conversation of Joshua Kennedy before alluded to than he has already done.

To the 3d cross interrogatory witness says: He thinks he resided on the corner of Jackson and Church streets in this city, in 1829 and 1830; came to Mobile in 1818; the only property witness owned in 1829 and 1830 in Mobile, was that where he then lived; the first property he purchased in Mobile was between Government and Church streets, on Conception street.

To the 4th cross interrogatory witness says: He continued to reside on corner of Jackson and Church streets until within about the last three years; since then he has lived a little north of Government street road, about three miles from the river; witness was city sexton for about thirteen years after 1829; subsequently he commenced cultivating the soil, and is still doing so.

To the 5th cross interrogatory witness says: He does not recollect any great scarcity of money here in 1829 and 1830; thinks there was enough; to the rest of this interrogatory says he does not consider himself competent to judge.

To the 6th cross interrogatory witness says: He thinks there was a considerable advance in the price of property up town, from 1829 to 1831; cannot say what per cent.

To the 7th cross interrogatory witness says: He does not recollect that his attention was ever very particularly called to the value of the south half of the Baudain tract, until the question was asked on this examination.

To the 8th cross interrogatory he says: He was not.

To the 9th cross interrogatory witness says: His estimate of the value of the south half of the Baudain tract is founded partly on sales of property in that neighborhood; cannot state particularly what sales were made in that neighborhood, except that some were made by Innerarity; does not recollect the purchasers, nor the terms as to credit, nor the dates of the same; deponent heard of these sales in the street; he was not present at any of the sales.

To the 10th interrogatory witness says: The principal part of the city burnt in 1827, was from Royal street down to the river.

To the 11th cross interrogatory witness says: It was several years after said fire before the burnt district was all built up.

To the 12th cross interrogatory witness says: The first buildings he

recollects to have been put up after that fire were on Dauphin street; the buildings principally extended up town from that point.

To the 13th cross interrogatory witness says: He cannot specify them.

To the 14th cross interrogatory witness says: The business of the city was thrown up town by the fire to a very great degree, and a good deal of it returned to Dauphin street, and below, as the houses in the burnt district were rebuilt; does not recollect any instances of the sort spoken of.

To the 15th cross interrogatory witness says: He thinks buildings in the neighborhood of St. Michael street were more in demand immediately after the fire in 1827 than they were in 1829; buildings were scarcer in 1827 than in 1829.

To the 16th cross interrogatory witness says: The part east of a line so drawn would have been worth a good deal more than the half square west of it, but how much more witness is not prepared to state.

To the 17th cross interrogatory witness says: The value of lands above St. Louis and east of Royal street was rather speculative, in *in* 1829 and 1830, than fixed and determined; they were valuable in 1829 and 1830, independent of the improvements put upon them; thinks they could have been leased for 20 years on condition of lessee's filling up and building on them; cannot answer the rest of this interrogatory.

To the 18th cross interrogatory witness says: He does not know.

To the 19th cross interrogatory witness says: He thinks the value of lands off the water was at that time better ascertained than of those lying on the water.

To the 20th cross interrogatory witness says: He thinks A. W. Gordon, Wm. Jones, jr., and Jos. E. Sheffield were all interested in property between Royal street and the river, and St. Michael, and St. Louis street; thinks they were engaged in improving said property about that time; thinks their valuation of said property was high at the time.

To the 21st cross interrogatory witness says: He thinks James Innerarity was largely interested in real property up town in 1830, and previously, and was thought to be, and witness thought him a man that placed a high value on his property.

To the 22d cross interrogatory witness says: He cannot say.

To the 22d cross interrogatory witness says: He is unable to say.

To the 23d cross interrogatory witness says: He does not know.

To the 24th cross interrogatory witness says: He thinks property up town did commence rising immediately or very soon after the sale of the Orange Grove in 1831; property all over the city rose a good deal betwixt 1831, and 1836, and 1837, about which time he thinks property reached its highest point.

To the 25th cross interrogatory witness says: He does not know.

To the 26th cross interrogatory witness says: He thinks the rise in property north of St. Louis street and east of Royal street, subsequently to 1831, was founded to a great degree upon a demand for the same on speculation; the improvements on property *these* witness thinks were principally made after property had reached its highest point; some

were made before; thinks the improvements there commenced about 1835 and 1836; thinks a block of buildings was erected by Cleveland and Campbell on the northeast corner of St. Louis and Water streets before 1837; he cannot specify further.

To the 27th and 28th cross interrogatories witness says: He believes he has answered these interrogatories as fully as he is able to do.

To the 29th cross interrogatory witness says: He is not aware that he knows any thing further that would be materiâl to either party in this suit.

DANIEL ROBERTSON.

Sworn to and subscribed before me, this 19th day of April, A. D. 1845.

THOS. A. HAMILTON,
Commissioner.

Wm. Fisher.

Wm. Fisher, one of the witnesses, came before me, Thos. A. Hamilton, one of the commissioners, at the office of P. & T. Hamilton on the 21st day of April, A. D. 1845; and the said Fisher having been duly sworn, did testify and depose as follows:

To the first interrogatory he answers and says: He does not recollect whether he ever saw Jos. E. Collins or not; he had no acquaintance with him.

To the 2d interrogatory witness says: He knows nothing about it.

To the 3d interrogatory witness says: He knew George Collins when he was a clerk with one Joseph Krebs in this city; did not know Joseph or Sidney that he recollects; does not recollect the year when he first knew George Collins; he was a clerk with Mr. Krebs at the time; does not recollect the time when George left this State; only knew him while he was living with Mr. Krebs.

To the 4th interrogatory witness says: George Collins was a clerk with Jos. Krebs when he knew him. Mr. Krebs kept a store on Dauphin street at the time.

To the 5th interrogatory witness says: He only knows there are lands lying on the river north of St. Louis street. There were no improvements on said land between 1806 and 1813. Lime used to be burnt there sometimes in those days. There was a little shell bank there. Witness once assisted his father in burning lime there in those years. The place used for this purpose was north of St. Louis street, and some thirty or forty feet (as he should think) west of Water street. Witness never conversed with William E. Kennedy or Joseph Collins on the subject of those lands or their claims thereto.

To the sixth interrogatory witness says: He never conversed with Joshua Kennedy on the subject of the lands claimed by Joseph Collins or his heirs.

To the 7th interrogatory witness says: He is not aware that he knows any thing further which would be material to either party in this suit.

Cross examined.

To the 1st cross interrogatory witness says: He does not know any thing about it.

To the 2d cross interrogatory witness says: He was very young during the years from 1805 to 1811. About the years 1808, '09, and '10, he used to hear occasionally that Joseph E. Collins was in town. Does not recollect much previous to that time. Witness was born in 1801. Witness thinks from what he heard that Mr. Collins did probably stay some days at a time when he came to Mobile. Cannot say how long. Does not know any thing about Elizabeth Wilson. Used to hear his (Collins) family lived in Pascagoula, or in that neighborhood.

To the 3d interrogatory witness says: He cannot say.

To the 4th interrogatory witness says: He does not know any thing about it.

To the 5th cross interrogatory witness says: Joshua Kennedy once told him that he claimed land, including a tract north of St. Louis street, and east of Royal, under a grant to Thomas Price. Witness does not recollect exactly when Kennedy told him so, but thinks it was in 1834 or 1835. Cannot answer this interrogatory further.

To the 6th cross interrogatory witness says: He does not know any thing about it.

To the 7th cross interrogatory witness says: He does not know the value of those lands in 1829 and 1830. Lands above St. Louis street were not much in demand in 1829 and 1830. Those lands have been reclaimed since 1830. Joshua Kennedy was the first man witness saw filling up then. Witness thinks Joshua Kennedy put a frame house on said land before 1830, and also a wharf in front thereof. Witness cannot say what improvements Joshua Kennedy put on said land after 1830. Understood he put up some brick buildings there, but he does not know. To the rest of this interrogatory witness says he cannot say.

To the 8th cross interrogatory witness says: He recollects those lands in 1824 and 1825. Thinks there was no remarkable change in the appearance of those lands in those two years, but cannot say positively. He was not often in that neighborhood. Does not think said lands were worth a great deal in 1825.

WILLIAM FISHER.

Sworn to and subscribed before me, this 21st day of April, A. D. 1845.

THOMAS A. HAMILTON,
Commissioner.

J. S. Gliddon.

John S. Gliddon, one of the witnesses, came before me, Thomas A. Hamilton, one of the commissioners, at the office of P. and T. Hamilton, in the city of Mobile, on the 21st day of April, 1845; and the said Gliddon having been duly sworn, did testify and depose as follows:

To the 1st interrogatory he answers and says: He does not know the value *the value* of that piece of land in 1829 and 1830. Does not know what improvements were on it at that period.

To the 2d interrogatory witness says: He never had any conversation with Joshua Kennedy on the subject of those lots.

To the 3d interrogatory witness says: He thinks there were some improvements as high up as St. Louis street in 1829 and 1830. He thinks the Union Press was built about that time on the corner of St. Louis and Water streets. Does not think property improved to any remarkable extent up town immediately after the fire in 1827. Thinks there were not any very extensive improvements going on in any part of the city in 1829 and '30.

To the 4th interrogatory witness says: He does not know, except he thinks there was a wharf a little above the foot of St. Louis street, called Kennedy's wharf.

To the 5th interrogatory he says: He does not recollect whether there was any house on the land or not.

To the 7th interrogatory witness says: He has been introduced to the plaintiff some three weeks since, but knows nothing about him.

To the last interrogatory witness says: He is not aware that he knows any thing which would be material to either party.

Cross examined.

To the 1st and 2d cross interrogatories witness says: He does not know any thing about it.

To the 3d cross interrogatory witness says: He resided on the corner of Franklin and State streets in this city in 1829 and '30. Witness first came here to live in 1824. In 1829 and '30, witness owned the property where he lived as above stated, and also a piece of property on the corner of St. Francis and Franklin streets. He first purchased real property in Mobile in 1824.

To the 4th cross interrogatory witness says: He has always resided in Mobile since 1824. He has always been employed in the smith business since that time.

To the 5th cross interrogatory witness says: He is inclined to believe that money was rather scarce in Mobile in 1829 and '30. To the remainder of this interrogatory he says, he does not know.

To the 6th cross interrogatory he says: He does not know.

To the 7th cross interrogatory witness says: He never knew the Baudain tract of land.

To the 8th cross interrogatory he says: He was not assessor of taxes in either of those years.

To the 9th cross interrogatory witness says: He has not stated the value of the south half of the Baudain tract.

To the 10th cross interrogatory witness says: The great fire of 1827 burnt the principal part of the town from St. Emanuel and St. Joseph streets on the west through the river, being bounded on the north by St. Francis street, and on the South by Conti street.

To the 11th cross interrogatory he says: It was three or four years afterwards before the burnt district was built up again.

To the 12th cross interrogatory witness says: He thinks the first buildings after the fire of 1827 were erected on Dauphin street, near Water. Cannot say in what direction the buildings extended from that point, but thinks it was towards St. Francis street.

To the 13th cross interrogatory witness says: He cannot tell.

To the 14th cross interrogatory witness says: He does not know that business was forced or crowded up above Dauphin street immediately after the fire in 1827. Thinks there was about as much below as above. Immediately after the fire people were obliged to go wherever they could get a place to put their goods, and of course they removed to more convenient places afterwards, as soon as they could be had.

To the 15th cross interrogatory witness says: He cannot say that there was a greater demand for buildings for business purposes in the neighborhood of St. Michael street, than there was in any other part of the town, where buildings could be had immediately after the fire.

To the 16th, 17th, 18th, and 19th cross interrogatories witness says: He does not know.

To the 20th cross interrogatory he says: He thinks William Jones, jun., and A. W. Gordon owned property there in those years. Thinks about that time they were engaged in improving property there. Does not know how they valued property up there.

To the 21st, 22d, 22*d*, 23d, 24th, 25th, 26th, 27th, 28th, and 29th witness says: He believes he has stated all he knows that is material to the issue between the parties.

J. S. GLIDDON.

Sworn to and subscribed before me, this 21st day of April, 1845.

THOMAS A. HAMILTON,
Commissioner.

Joseph Cain.

Joseph Cain, one of the witnesses named, came before me, Thomas A. Hamilton, one of the commissioners, at the office of P. and T. Hamilton, in the city of Mobile, on the 21st day of March, A. D. 1845; and the said witness having been duly sworn, did testify and depose as follows:

To the 1st interrogatory witness says: He cannot say that he knows the precise value, but if he had had the money, he would have been willing to give twenty-five thousand dollars, in 1829 and 1830, for that piece of land in the city of Mobile lying between St. Louis and St. Anthony streets, and running from Royal street to the channel of the river. Witness says there was in 1829 and 1830 a small frame house on said property, and thinks there was also a wharf in front of the said property.

To the 2d interrogatory witness [says]: He does not recollect ever having any conversation with Joshua Kennedy with regard to that land.

To the 3d interrogatory witness says: He knows there were sales of property in that vicinity about 1829 and 1830. A. W. Gordon purchased a lot of Kennedy in that neighborhood somewhere about that time. Witness does not recollect the price given by Gordon or others at that time for property up there purchased by them. Witness thinks the city had improved to some extent as high as St. Louis street by 1829 and '30. Does not recollect the general impression in Mobile, in 1829 and '30, as to which course the improvements would take, up or down. Witness himself thought that part of the city must increase in value. Witness thinks property in the upper part of the city did increase in value after the fire of 1827, but he cannot say to what extent.

To the 4th interrogatory witness says: He has known there was such property since 1823, and always supposed Joshua Kennedy to be the owner of, and in possession of the same. Witness never heard or knew the yearly value of the wharf in front of that property.

To the 5th interrogatory witness says: He thinks the house on the property was occupied by Joshua Kennedy's negroes in 1829 and '30. Is under the impression Kennedy had an office there himself, but he is not positive. This house was between Royal and Water streets. It is still standing. Thinks it is nearer Water than Royal street.

To the 7th interrogatory witness says: He does not recollect having any acquaintance with the plaintiff in this suit until recently, viz., a few weeks ago.

To the last interrogatory witness says: He is not aware that he knows any thing further that would be material to either party in this suit.

Cross examined.

To the 1st cross interrogatory witness says: He is not interested himself, and does not know who is.

To the 2d cross interrogatory witness says: He has not stated any such conversation.

To the 3d cross interrogatory witness says: He resided in Mobile in 1829 and 1830. First came to Mobile in 1823 to reside Owned property on Dauphin street; owned 100 feet on the river below Heard's press, running back to Royal street, not so wide on Royal street; witness also owned other property in the city in 1829 and '30; witness first bought real property in Mobile about the year 1828 or thereabouts.

To the 4th cross interrogatory witness says: Since 1830, he has been employed part of the time in attending to a wharf or wharves, and in dealing in lumber, &c.

To the 5th cross interrogatory witness says: Money was rather scarce with him in 1829 and '30; he does not know how it was with other people. Supposes some had plenty of money and others had little or none, the same as now. To the rest of this interrogatory he says, he does not know.

To the 6th cross interrogatory witness says: He thinks property up town did advance in price from 1829 to 1831, but he cannot say how much.

To the 7th cross interrogatory witness says: In 1829 and '30, he owned a wharf lot down town, which he attended to himself about that time; that lot was small, but yielded a very handsome income for its size. Witness had a good deal of trouble in getting business to come down there, instead of going up town, and recollects thinking that wharf property or property on the river up town must be much more valuable than it was below; and in this way he first came to form an idea of the value of property situated like that inquired of in the first direct interrogatory.

To the 8th interrogatory witness says: He was not an assessor of taxes in these years.

To the 9th cross interrogatory witness says: His idea of the value of the said property, in 1829 and '30, was principally formed as above stated in the reply to the 7th cross interrogatory.

To the 10th cross interrogatory witness says: The great fire in 1827 was bounded principally by St. Francis street on the north, Government street on the south, the river on the east, and Royal street on the west. There were also some houses burnt west of Royal street.

To the 11th cross interrogatory witness says: The burnt district was built up again almost immediately with wooden shanties, but it was several years before it was permanently rebuilt.

To the 12th and 13th cross interrogatories witness says: He does not recollect particularly.

To the 14th cross interrogatory witness says: He thinks there were some instances after the fire of 1827 of persons who moved up town, and afterwards returned as the burnt district was rebuilt, but he cannot now specify them.

To the 15th cross interrogatory witness says: He does not recollect.

To the 16th cross interrogatory witness says: He cannot say what would be the proportionate value, but he thinks the part lying on the river east of such a line was far the most valuable part of the whole in 1829 and 1830.

To the 17th cross interrogatory witness says: There were not many sales of land there at that time, and he does not know whether their value was fixed or not. Witness thinks lands immediately north of St. Louis street could have been sold at that time; does not know on what terms they could have been leased for a term of ten years, nor what they could have been rented for per annum without the improvements; should suppose there would not have been any difficulty in leasing the lands for twenty years, on condition of filling up and building.

To the 18th cross interrogatory witness says: He does not know.

To the 19th cross interrogatory witness says: He supposes the value of the lands in the central part of the city was more certain than in any other parts.

To the 20th cross interrogatory witness says: He supposes Wm. Jones, jr., A. W. Gordon, and L. Mitchell, were the principal owners of property there from 1828 to 1832. Witness is under the impression

that they were improving said lands between those years. Does not know whether their valuation of property up town was high or not.

To the 21st cross interrogatory witness says: He believes James Innerarity was largely interested in property up town in 1830 and previously; witness does not know how he valued property up town.

To the 22d, 22*d*, and 23d cross interrogatory witness says: He does not know.

To the 24th cross interrogatory witness says: He says he does not know, except that property reached its highest point in Mobile about the year 1835 or 1836.

To the 25th cross interrogatory witness says: He does not know.

To the 26th cross interrogatory witness says: He thinks the demand for property north of St. Louis and east of Royal street, after 1831, was partly for purposes of speculation and partly for improvement; thinks some improvements were made there before property had reached its highest point; witness is under the impression (but is not positive) that the improvements commenced in that neighborhood about 1833; witness cannot specify the houses erected in that region before 1837. The buildings erected by Campbell and Cleveland are on the north side of St. Louis street, and witness thinks there are no other houses on the north side of St. Louis street, east of Royal street. To the rest of this interrogatory witness says he does not know.

To the 28th cross interrogatory witness says: He believes the plaintiff told him he had lived in Missouri.

To the 29th cross interrogatory witness says: He is not aware that he knows any thing further material to either party in this suit.

JOSEPH CAIN.

Sworn to and subscribed before me, this 21st day of April, A. D. 1845.

THO. A. HAMILTON, *Commissioner*.

Jno. K. Collins's testimony.

John K. Collins, one of the witnesses, came before me, Thos. A. Hamilton, [one] of the commissioners, at the office of P. & T. Hamilton, in the city of Mobile, on the 21st day of April, A. D. 1845; and the said Collins having been duly sworn by me, did testify and depose as follows:

To the 1st interrogatory he answers and says: He does not know how to estimate the value of that land at that time; cannot say what it was worth; witness thinks there was a wharf on said property in 1829 and '30; does not recollect any other improvements on said land at that time.

To the 2d interrogatory witness says: He has no recollection of hearing Joshua Kennedy speak of that land at any time.

To the 3d interrogatory witness says: He thinks there were some sales of land in that neighborhood in 1829 and '30, but he has no recollection of the prices; does not recollect any improvements as high up

as St. Louis street in 1829 and '30. About the year 1828 witness put up some buildings for A. W. Gordon, on the corner of Water and St. Michael street, and running north 130 feet towards St. Louis street. The city was improving upwards, and it was pretty clear in 1829 and '30 that the city would extend up stream. Witness thinks there was some improvement of the property up town after the fire of 1827, but does not think the improvement was very rapid.

To the fourth interrogatory witness says: He always understood Joshua Kennedy enjoyed the occupancy and control of the property referred to; witness thinks the wharf on the property might have been worth twenty-five hundred dollars; does not know what was its yearly value.

To the 5th interrogatory witness says: He does not recollect that there was any house on the property in 1829 and '30.

To the 7th interrogatory witness says: He does not know that he ever had any acquaintance with Sidney E. Collins; he has seen him in Mobile recently.

To the last interrogatory witness says: He is not aware that he knows any thing further material to either party.

Cross examined.

To the 1st cross interrogatory witness says: He is not interested in the prosecution of this suit, and does not know who is, unless it be the plaintiff.

To 2d cross interrogatory he says: He does not recollect having any conversation with Joshua Kennedy on the subject.

To the third cross interrogatory witness says: He first came to Mobile to reside in 1819, and has lived here ever since. He owned property on St. Joseph street, between St. Louis and St. Michael, in 1829 and '30; he first purchased real property in Mobile in 1824 or 1825, to the best of his recollection.

To the 4th cross interrogatory witness says: He has been employed as a builder since 1830.

To 5th cross interrogatory witness says: He is under the impression that money was scarce in Mobile in 1829 and '30; witness thinks most of the sales then were on time, but what proportion sales made in this way would have borne to sales for cash he is unable to say.

To the 6th cross interrogatory he says: He thinks there was not much advance in the price or value of property from 1829 to 1830; cannot say what per cent.

To 7th cross interrogatory witness says: He has never formed any estimate of the value of that land; has always been under the impression that the city would eventually recover a good part of that land.

To the 8th cross interrogatory witness says: He was not an assessor of taxes in either of those years.

To 9th cross interrogatory witness says: He has not formed any estimate of the value of that property.

To the 10th cross interrogatory witness says: The fire of 1827 com-

menced near the corner of Dauphin and Royal streets; it went down Royal to Conti street, and down the north side of Conti street to about Water street, and then crossed over to the south side of Conti street, and burnt out to the river; it did not burn down much of Dauphin street, but crossed the square, in a sort of diagonal direction, from Royal to Water street.

To the 11th cross interrogatory witness says: It was some years before the whole of the burnt district was built up again.

To the 12th cross interrogatory witness says: The first buildings, after the fire, were erected by deponent for Judge Edward Hall, on the north side of Conti street, between Royal and Water streets; buildings were put up at various points afterwards.

To the 13th cross interrogatory witness says: He does not recollect with sufficient particularity to specify the buildings.

To the 14th cross interrogatory witness says: He does not know that the business of the city was much crowded up town in consequence of the fire; he has no doubt there were instances of persons who went up town in search of stores immediately after the fire, but returned again when they could find more convenient stores in the burnt district; does not recollect any particular instances of this kind.

To the 15th cross interrogatory he says: He presumes there was a greater demand for buildings after the fire, wherever they could be had, than there was in 1829; buildings were scarce after the fire; witness does not recollect much about this matter; he only supposes it must have been so from the nature of things.

To the 16th interrogatory witness says: He cannot say.

To 17th interrogatory witness says: He thinks the value of those lands was uncertain and speculative in 1829 and '30; without these improvements, witness cannot say on what terms said lands could have been leased for a term of 10 years, nor on what terms for 20 years.

To the 18th cross interrogatory witness says: He cannot say.

To the 19th cross interrogatory he says: He thinks lands on Dauphin street, east of Royal street, had more of a fixed and definite value, from 1828 to 1831, than lands in any other part of the city had at that time.

To the 20th cross interrogatory witness says: He thinks A. W. Gordon and William Jones, junr., and perhaps Jonathan Hunt, were the principal owners of property betwixt St. Michael and St. Louis streets, and Royal street and the river: Gordon and Jones were improving there, as witness thinks, in those years; witness does not think their valuation of up town property was considered high at that time.

To the 21st cross interrogatory witness says: He always understood that James Innerarity owned a good deal of property in the upper part of the city, in 1830, and previously; always understood that Innerarity set a high value on his property; witness did not consider himself competent to judge of the value of property at that time.

To the 22d cross interrogatory witness says: It is possible that a strip of land 50 feet wide, fronting on Dauphin street, and running through to Conti street, might have been purchased, in 1829 or 1830, for some-

where in the neighborhood of five thousand dollars; this is the impression of witness at this time; that was the very time to buy property to make money; Jonathan Hunt bought a good deal about that time; witness thinks one half of the square, bounded east by Royal street, and south by St. Louis street, could have been bought, in 1829 and '30, for three thousand dollars in cash.

To the 22d cross interrogatory he says: He cannot tell the comparative value of these two pieces of property.

To the 23d cross interrogatory witness says: He thinks James Innerarity was very much pleased with the sale of the Orange Grove, in 1831, for $40,000; witness was present at the sale, and Innerarity acted as if he was perfectly delighted with the result.

To the 24th cross interrogatory witness says: He thinks the sale of the Orange Grove did not, until a year or two afterwards, give any thing of an impulse to the value or prices of up town property; it commenced rising two to three years after, and rose with great rapidity and to a great height; witness thinks property reached its highest point about 1836 and 1837.

To the 25th cross interrogatory witness says: He does not know.

To the 26th cross interrogatory witness says: He thinks the rise in the value of property north of St. Louis street, after the Orange Grove sale in 1831, was founded principally on a demand for purposes of speculation; witness thinks the improvements in that quarter have been principally made since 1836, and that they began about 1835; Campbell and Cleveland's buildings, and Joshua Kennedy's buildings, except a wooden saw-mill built by Thomas Ellison, are the only buildings witness recollects in that region previous to 1837.

To the 27th interrogatory witness says: The first building erected on the north side of St. Michael street, east of Royal street, was a wooden building, erected probably in 1823 or 1824, excepting an old wooden building on Royal street, occupied by Dr. Guesnard, which was built before witness came to this country; Campbell and Cleveland's buildings, corner of St. Louis and Water streets, were built about 1835, and are the most southerly buildings north of the south side of St. Louis street; to the rest of this interrogatory witness says he does not know.

To the 28th cross interrogatory witness says: He does not know any thing on the subject.

To the 29th cross interrogatory witness says: He is not aware that he knows any thing further that would be material to either party in this suit.

JNO. K. COLLINS.

Sworn to and subscribed before me, this 21st day of April, A. D. 1845.
THOS. A. HAMILTON, *Com.*

J. B. Earle's testimony.

Joseph B. Earle, one of the witnesses, came before me, Thos. A. Hamilton, one of the commissioners, at the office of P. and T. Ham-

ilton, in the city of Mobile, on the 23d day of April, A. D. 1845; and the said Earle, having been first duly sworn by me, did testify and depose as follows:

To the first interrogatory he answers and says: He does not know.

To 2nd interrogatory he says: He was once delegated by a company to which he belonged to negotiate with Joshua Kennedy for the purchase of all the lands belonging to him east of Royal street and north of St. Louis; said company was willing to give a good price for said land; he does not recollect how much; this was in 1835 or 1836; does not recollect how Joshua Kennedy claimed the land, only Joshua Kennedy told him his title was indisputable; does not know how high a value said Joshua put upon the land; he expressed no desire to sell at any price.

To the 4th, 5th, and 7th interrogatories witness says: He knows nothing about this land previous to 1835.

To the last interrogatory [he] says: He is not aware that he knows anything material to either party in this suit.

Cross examined.

To the 1st cross interrogatory witness says: He has no interest in the matter, and does not know who has.

To the 2nd cross interrogatory witness says: He cannot answer this interrogatory any more fully than he has already done.

To 3d interrogatory witness says: He lived in Marengo county in 1829 and '30; came to Mobile to spend his winters in 1835 and 1836; first bought real property in Mobile 1834 or '5.

To the 4th cross interrogatory witness says: He was a planter in Marengo county until about 1841 or 1842, when he moved altogether to Mobile.

To the 5th, 6th, and 7th cross interrogatories witness says: He does not know anything about it.

To the 8th cross interrogatory he says: He was not.

To all the remaining cross interrogatories witness says: He knew nothing of the value of real estate in Mobile in the years 1829 and 1830, and he knew very little of Mobile previous to 1835.

JO. B. EARLE.

Sworn to and subscribed before me, this 23d day of April, A. D. 1845.

THOS. A. HAMILTON,
Commissioner.

Daniel Walker's testimony.

Daniel Walker, one of the witnesses, before me, Thos. A. Hamilton, one of the commissioners, at the office of P. and T. Hamilton, in the city of Mobile, on the 23d day of April, A. D. 1845; and the said Walker, having been first duly sworn by me, did testify and depose as follows:

To the 1st interrogatory he answers and says: He thinks there was a

wharf on the property, and, including the wharf, he should think, in 1829 and '30, the property bounded north by St. Anthony street, south by St. Louis street, west by Royal street, and east by the channel of the river, would have been worth somewhere in the neighborhood of twenty-five thousand dollars; it is hard to estimate what was the value of property at that time, but witness is under the impression that that property would have brought about twenty-five thousand dollars if put up and sold at that time; witness thinks there was a frame house on said property, as well as a wharf, in 1829 and '30; witness should suppose the house and wharf were probably worth together about five thousand dollars, at that time.

To the 2nd interrogatory witness says: He does not recollect ever having any particular conversation with Joshua Kennedy on the subject of that land.

To the 3d interrogatory witness says: He recollects there were sales of some property not far from this, somewhere about 1829 and '30, but he cannot recollect the precise year; A. W. Gordon purchased half the square south of this property, between Royal and Water streets about that time, but witness cannot state the year; it may have been a year or two later or earlier; there were some improvements (witness thinks) as high as St. Louis street in 1829 and '30; witness has always thought the city would extend up stream; witness does not recollect that there was any very considerable increase of value in property immediately after the fire of 1827.

To the 4th interrogatory witness says: Joshua Kennedy always appeared to control said property as the owner during his lifetime; Kitchen seemed to have something to do with it also for some time, but it was under the direction of Kennedy, as witness believes; at one time Kitchen proposed to erect some buildings on a part of this property; Kitchen told deponent he had leased the land from Kennedy; it was just above St. Louis street; he had got some brick on the ground, but afterwards abandoned the idea of building; witness thinks this [was] some seven years ago; as well as he recollects, it was old Mr. Kitchen, of Baldwin county; about the same time witness wanted to lease a lot on this property from Joshua Kennedy for the purpose of building a warehouse on Commerce street, but Kennedy told him he could not do it, as he had given Kitchen the use of the land; witness thinks the yearly value of the wharf on the property must have been somewhere in the neighborhood of a thousand dollars in 1829 and '30.

To the 5th interrogatory witness says: Some of Joshua Kennedy's negroes inhabited the house on said land in 1829 and '30; this house was situated west of Water street, between St. Anthony and St. Louis; witness thinks said house was only about 50 or 60 feet south of St. Anthony street; the ground was low at the time.

To the 7th interrogatory witness says: He does not know the plaintiff in this suit at all; does not know how long he resided here, nor when he left this State.

To the last interrogatory witness [says]: He recollects this land for

about twenty-five years; when he first recollects it there was a high bluff on Royal street, and the tide frequently came a good ways up between Water and Royal streets; but before 1830, from washings and other natural causes, a great deal of filling up had been done on the land without any artificial aid; in this way the filling up had extended pretty well down towards Water street; witness is not aware that he knows anything further material to either party in this suit.

Cross examined.

To the 1st cross interrogatory witness says: He is not interested himself, and cannot say who are.

To the 2nd cross interrogatory witness [says]: He cannot answer any more particularly than he has already done.

To third cross interrogatory witness says: He came to Mobile in 1820; he resided here in 1829 and '30; at that time he owned a house and lot or two on St. Joseph street; thinks he first bought real property in Mobile in 1827.

To the 4th interrogatory witness says: He has resided in Mobile since 1830; up to 1837 he was employed in mercantile business; for the last few years he has been engaged on the river on a steamboat.

To the 5th interrogatory witness says: He should think the difference between sales for cash and on such credit as required of in this interrogatory would have been about 25 per cent. in 1829 and '30; cannot say whether money would have been called scarce or plenty in those years.

To the 6th cross interrogatory witness says: He cannot say what was the per centage of advance in the price of property from 1829 to 1831.

To 7th cross interrogatory witness says: He does not know that he ever attempted to form a precise idea of the value of those lands in 1829 or '30, until to-day.

To the 8th cross interrogatory he says: He was not.

To 9th cross interrogatory witness says: His estimate of the value of the south half of the Baudain tract is founded upon his estimate made of the value of the lands in 1829 and '30. He supposes his estimates of the value of lands at that time were made upon sales made at that time, but he cannot now particularize them.

To the 10th cross interrogatory witness says: The fire in 1827 burned the principal part of the city east of Royal street and north of Conti.

To the 11th cross interrogatory witness says: It was several years after said fire before the whole of the burnt district was rebuilt.

To the 12th and 13th cross interrogatories witness says: He cannot state particularly.

To the 14th cross interrogatory witness says: He does not recollect that the fire of 1827 forced business up town a great deal; it did temporarily, perhaps; shanties were put up over a great part of the burnt district forthwith, which were immediately occupied. Witness does recollect instances of persons who moved up town immediately after

the fire of 1827, and who returned afterwards when the burnt district was rebuilt.

To 15th cross interrogatory witness says: He thinks there was.

To 16th cross interrogatory witness says: He thinks the western half of the square lying east of royal street and north of St. Louis street was worth about three or four thousand dollars; the property east of it was worth (he thinks) the remaining part of twenty-five thousand dollars.

To 17th cross interrogatory witness says: He thinks there was no fixed value to property there at that time; they had a value independent of the improvements of course; thinks they could have been leased for twenty years on any reasonable terms.

To the 18th cross interrogatory witness says: It is impossible for him to say.

To the 19th cross interrogatory witness says: In these years he supposes the value of lands on Dauphin street, east of Royal, was better known than any other part of the city.

To the 20th cross interrogatory witness says: He thinks A. W. Gordon and Wm. Jones, jun., and Joseph E. Sheffield, were the principal owners of property there from 1828 to 1832; thinks they were improveing that property to some extent during those years; cannot say as to whether their valuation of up town property at that time was high or not.

To 21st cross interrogatory witness says: James Innerarity was largely interested in property up town in 1830 and previously; cannot say as to his valuation.

To the 22d cross interrogatory witness says: A lot, 50 feet wide, fronting on both Dauphin and Conti street, witness thinks would have been worth at that time from three to four thousand dollars without improvements, probably four thousand. The value of the eastern half of the square, bounded east by Royal street and south by St. Louis street, witness thinks would have been about from four to five thousand dollars in those years.

To the 22d cross interrogatory witness says: This is a hard question to answer. He thinks that portion of the Orange Grove tract, lying east of Royal street, was worth more in 1829 and '30 than the strip of land bounded north by St. Anthony street, south by St. Louis, and running east from Royal street to the river, but he does not think it was worth twice as much.

To the 23d cross interrogatory witness says: He does not know.

To the 24th cross interrogatory witness says: He thinks the sale of the Orange Grove, in 1831, did give a marked impulse to up town property; it commenced rising soon after that sale; rose pretty rapidly until 1836 and 1837, when it reached its highest point.

To the 25th cross interrogatory witness says: He does not know the precise dimensions of the Orange Grove tract, and cannot say how much it was worth in 1829 and '30.

To the 26th cross interrogatory witness says: He thinks the demand

for property north of St. Louis and east of Royal street, after the Orange Grove sale in 1831, was principally founded on a demand for purposes of speculation; thinks property north of St. Louis street was improved to some extent before it reached its highest point, but the largest part of the improvements have been made since 1835; cannot specify the houses in this region erected before 1837.

To 27th cross interrogatory witness says: He thinks Campbell and Cleveland's buildings are the only ones standing immediately on north side of St. Louis street, east of royal. To the rest of this interrogatory witness says he cannot say.

To 28th cross interrogatory witness says: He does not know any thing about the plaintiff's residence.

To 29th cross interrogatory witness says: He is not aware that he knows any thing further material to either of the parties in this suit.

DANIEL WALKER.

Sworn to and subscribed before me, this 23d day of April, A. D. 1845. THOS. A. HAMILTON,
Commissioner.

H. Kinney's testimony.

I caused Henderson Kinney, one of the witnesses, to come before me, Thos. A. Hamilton, one of the commissioners, at the office of P. & T. Hamilton, in the city of Mobile, on the 24th day of April, A. D. 1845; and the said Kinney having been first duly sworn, did testify and depose as follows:

To the 1st interrogatory witness answers and says: He scarcely knows the value of that land except by reference to the assessments of those years; he thinks that property was assessed about that time at twenty-five or thirty thousand dollars, and he is under the impression that was about its value In 1829 and '30 witness thinks there was a wharf and also a wooden building on said property; he should think the value of the wharf and building was then about twenty-five hundred dollars.

To 2d interrogatory witness says: He knows nothing about it.

To the 3d interrogatory witness says: He was interested with Campbell and Cleveland somewhere about that time (he does not recollect the year) in the purchase of some property fronting partly on St. Anthony street and partly on Water street; he does not recollect what they paid for that land; on reflection witness thinks said purchase was made in 1833, and was of a strip of land commencing fifty feet west of Water street, and running through to the channel of the river. This land was purchased of Batre for five thousand five hundred dollars; and a copy of deed marked exhibit B to A. Batre's testimony, witness says, contains a description of said property and of the terms of the sale; witness thinks there were improvements as high as St. Louis street, east of Royal, in 1829 and '30. It was evident the city would extend upwards. Witness thinks the improvement of property in the upper part of the city increased a good deal after the fire of 1827.

To the 4th interrogatory witness *says:* Joshua Kennedy occupied and controlled said property. Does not know the yearly value of the wharf on the property at that time; should not think it would exceed a thousand or fifteen hundred dollars.

To the 5th interrogatory witness says: The house on said land was west of Water street and near St. Anthony; Joshua Kennedy's negroes, or some of them, lived in it, and witness thinks Joshua Kennedy kept an office there most of the time. This was in 1829 and '30, and both before and after, he thinks.

To the 7th interrogatory witness says: He was first introduced to the plaintiff yesterday; knows nothing of his history.

To the last interrogatory witness says: He is not aware that he knows any thing further that would be material.

Cross examined.

To the 1st cross interrogatory witness says: He knows not who are interested.

To the 2d cross interrogatory witness says: He has not stated any conversations with Joshua Kennedy.

To the 3d cross interrogatory witness says: He has lived in Mobile ever since 1819. In 1829 and '30, the property witness owned was principally on St. Michael street. First purchased real property in Mobile between 1828 and '30, as he thinks.

To the 4th cross interrogatory witness says: He has always been engaged in the same business, principally, namely, the management of various kinds of boats on the river.

To the 5th cross interrogatory witness says: He thinks money was scarce in Mobile in 1829 and '30. To the rest of *of* this interrogatory witness says, he does not know; all his purchases in those days were made for cash.

To the 6th *inter'y* cross interrogatory he says: He thinks there was considerable advance in the price of property up town from 1829 to 1831, cannot say how much.

To the 7th cross interrogatory witness says: Witness was not much acquainted in Mobile in those years, and the property up town was principally owned by Kennedy, he thought, and does not know that he ever offered to sell property there. Witness's ideas of the *of the* value of property at that time were derived almost altogether from the assessments of property for taxation.

To the 8th cross interrogatory he says: He was not.

To the 9th cross interrogatory witness says: He has already answered this interrogatory in substance.

To the 10th cross interrogatory witness says: The fire of 1827 commenced on the west of Royal street, and pretty much all the city east of that lying south of St. Francis street, and north of Conti, was consumed.

To the 11th cross interrogatory witness says: It was only two or three years before the burnt district was principally rebuilt, he thinks.

To the 12th cross interrogatory he says: He thinks they commenced

rebuilding chiefly on Dauphin street, and built principally up northwardly.

To the 13th cross interrogatory witness says: He thinks the principal part before the burnt district was built up, *were* erected by Batre and Gordon, and Sheffield and Jones, &c. Thinks the entire square between St. Francis and St. Michael, and Water and Commerce, was built up before the rebuilding of the burnt district.

To the 14th cross interrogatory witness says: The fire of 1827 did throw a good deal of business up above Dauphin street; does not think the business did return below Dauphin street again. Thinks it has been steadily going upwards ever since. Cannot recall any particular evidence of the kind alluded to.

To the 15th cross interrogatory witness says: He cannot say positively.

To the 16th cross interrogatory witness says: If a line had been drawn across the property north and south from St. Louis to St. Anthony street, half way between Royal and Water streets, he does not think the half square lying west of such line would have brought more than $5,000; thinks the part east would have been worth the remaining part of $25,000 or $30,000.

To the 17th cross interrogatory witness says: That property was in the hands of William Kennedy, and although people were willing to buy there, yet Joshua Kennedy would never sell. Witness himself tried to buy property in that part of the city somewhere about that time, but Kennedy never would sell, or even set a value. Witness never made him any offer, but merely asked him several times if he would sell, but he never would set any value. Witness supposes these lands could have been leased for a term of five years, on condition of filling them up for the use of water privileges. He leased some of these lands himself from Kennedy after that time, on condition of filling them up.

To the 18th cross interrogatory witness says: He does not know the relative value of the land in Orange Grove tract, lying east of Royal street, as compared with those lying west, but thinks at that time the *the* eastern portion was assessed about the same as the west.

To the 19th cross interrogatory witness says: He thinks that the value of the lands in the dwelling part of the city, west of Royal street, was more stable at that time than in any other parts.

To the 20th cross interrogatory witness says: He thinks Gordon, Jones, and Sheffield were the principal owners of that property about that time, and they were improving; thinks their valuation of up town property was low instead of high.

To the 21st cross interrogatory he says: He understood Innerarity owned the Orange Grove tract; some thought his valuations high, witness did not.

To the 22d cross interrogatory: He cannot say exactly what would have been the value of such a strip, running from Dauphin to Conti street; the value of a half square bounded east by Royal street, and

south by St. Louis, witness should think, was not more than about three thousand dollars in 1829 and '30.

To the 22d cross interrogatory: Witness thinks the strip called the south half of the Baudain tract, was worth in 1829 and '30 about one half as much as that part of the Orange Grove lying east of Royal street.

To the 23d cross interrogatory witness says: He thinks James Innerarity was well satisfied with the sale of the Orange Grove for $40,000.

To the 24th cross interrogatory witness says: The Orange Grove sale did give an impulse to up town property; it commenced rising immediately, and rose to a great height; it reached its highest point about 1837, he thinks.

To the 25th cross interrogatory witness says: He thinks he has already answered this in substance.

To the 26th cross interrogatory witness says: He thinks said demand was both for improvement and on speculation; they improved some parts of said property as soon as purchased. The improvements there have been going on gradually ever since. Cannot specify the houses erected before 1837.

To the 27th cross interrogatory witness says: He thinks the first house on north side of St. Michael, east of Royal street, was built between 1828 and 1830. Campbell & Cleveland's house was built about 1835, and stands immediately on the north side of St. Louis street. Cannot state how many squares down town the city had extended in the interval; doubtful whether any at all, except warehouses, &c., for cotton presses.

To the 28th cross interrogatory witness says: He cannot answer further than he has already done.

To the 29th cross interrogatory he says: He does not know any thing further on the subject so far as he is aware.

HENDERSON KINNEY.

Subscribed and sworn to before me, this 24th April, A. D. 1845.

THOMAS A. HAMILTON,
Commissioner.

J. B. Walker's testimony.

Jacob B. Walker, one of the witnesses, came before me, Thos. A. Hamilton, one of the commissioners, at the office of P. & T. Hamilton, in the city of Mobile, on the 25th day of April, A. D. 1845; and the said Walker having been first duly sworn by me, did testify and depose as follows:

To the 1st, 2nd, and 3rd interrogatories witness says: He first came to Mobile in 1831, and does not know anything about that property previous to that time.

To the 4th interrogatory he says: Joshua Kennedy controlled that property from the time he first knew it.

To the 5th, 7th, and last interrogatories witness says: He is not aware that he knows any thing further to benefit either party.

Cross examined.

To the 1st and 2d cross interrogatories witness says: He has no interest in this suit; never had any conversations with Joshua Kennedy about those lands.

To the 3d cross interrogatory witness says: He resided in Georgia in 1829 & '30; first purchased real property in Mobile in 1832, as he thinks.

To the 4th cross interrogatory he says: He resided in Mobile up to 1841 or '42; has been occupied in merchandising most of the time.

To the 5th, 6th, 7th, 8th, 9th, 10th, 11th, 12th, 13th, 14th, 15th, 16th, 17th, 18th, and 19th cross interrogatories witness says: He cannot state anything material in reply to these interrogatories; he did not come to Mobile to live until 1831.

To the 20th cross interrogatory witness says: When he first came to Mobile, in 1831, he thinks Joshua Kennedy and Wm. Jones, jun'r, were the principal owners of the property between St. Michael and St. Louis streets, Royal street, and the river; does not know that A. W. Gordon and Jos. E. Sheffield owned property there at that time; does not recollect that there were any improvements going on on that property at that time. Property up town bore a merely nominal value in 1831 and 1832; does not know that Mr. Jones or Kennedy set a high value on property up town at that time.

To the 21st, 22d, 23d, 24th, and 25th cross interrogatories witness says: He cannot state any thing that would be material in reply to these interrogatories.

To the 26th cross interrogatory witness says: He thinks the improvements north of St. Louis and east of Royal street commenced about 1832 or 1833, and have been made from year to year since that time; witness cannot specify the buildings erected in that region previous to 1837; Cleveland and Campbell put up a block of buildings there before 1837.

To the 27th cross interrogatory witness says: He thinks Campbell and Cleveland's buildings are the most southerly buildings of any value north of St. Louis and east of Royal street; cannot answer this interrogatory further.

To the 28th cross interrogatory witness says: He does not know any thing about the plaintiff's history.

To the 29th cross interrogatory witness says: He is not aware that he knows any thing further that would benefit either party to this suit.

J. B. WALKER.

Sworn to and subscribed before me, this 25th day of April, A. D. 1845.

THOS. A. HAMILTON, *Commissioner.*

Chester Root's testimony.

Chester Root, a witness for plaintiff, being introduced before me, a commissioner, on Tuesday, 24th March, 1845, at the office of P. & T.

Hamilton, and being first duly sworn, in answer to the first interrogatory says: He did not become acquainted with Joshua and William E. Kennedy until 1821; he knew little of either until 1823; to the rest he cannot answer.

To the second interrogatory he says: He does not know of Joshua Kennedy having become interested with Wm. E. in land claims, save the Price claim.

To the 3d interrogatory he says: In 1820 he did not know Wm E. Kennedy; but from 1823 to his death Wm. E. Kennedy was intemperate, so much so that witness, and the late Jno. Elliott, esq., advised him to convey all his property to Joshua Kennedy to save it for his children; to the rest of this interrogatory witness can give no answer, except that Wm. E. Kennedy did not follow any regular business.

To the 4th interrogatory he says: He did not know Sam'l Kitchen in 1820; subsequently he knew him by sight only; he resided in Baldwin county; did not know whether he lived with Joshua Kennedy or not.

To the 5th interrogatory he says: He can give no answer.

To the 6th interrogatory he says: He can give no answer; he does not know that Sam'l Kitchen ever resided in Mobile.

To the 7th interrogatory he says: He knows the property east of Water and north of Dauphin street, but *but* under what titles it is held he does not know.

To the 8th and 9th interrogatories he says: The principal business of Joshua Kennedy during the last 20 years of his life was surveying, locating, and perfecting his land titles, and sometimes selling lumber from his mill in Baldwin county; he was, like other men, anxious to obtain property, but confined himself principally to the acquisition of real estate; the reputation of Joshua Kennedy for *shrewdness* was universal, and he was exceedingly dexterous in the management and perfecting of land claims, and not often suspected of being scrupulously honest in such dealings.

To the 10th interrogatory he answers: He knows nothing of Sam'l Kitchen's property or acquisitions.

To the 11th interrogatory he answers: He knows of nothing more of benefit to either party.

Answers to cross interrogatories.

To the 1st cross interrogatory he says: He knows nothing of the matters here inquired of further than stated in his answer to the first direct interrogatory.

To the 2d cross interrogatory he says: He can give no other answers than that given to 2d direct interrogatory.

To the 3d cross interrogatory he says: He can give no answer of his own knowledge.

To the 4th cross interrogatory he says: He did not know Wm. E. Kennedy before 1821, but he was intemperate then, and remained so to his death, in 1825.

To the 5th cross interrogatory he says: He does not know how much influence persons may have had over Wm. E. Kennedy; witness has heard Joshua Kennedy complain that Wm. E. was disposing of his property improvidently, and the advice given by John Elliot and witness, before alluded to, was founded upon the statement of Joshua Kennedy, and was urged upon Wm. E. from kind feelings towards his children; how far this advice was followed witness does not know, but believes the Price claim was conveyed in pursuance of it.

To the 6th cross interrogatory he says: He knows nothing of the matters inquired of in this interrogatory.

To the 7th cross interrogatory he says: He knows nothing of the matters inquired of in this interrogatory.

To the 8th cross interrogatory he says: He has only known Saml. Kitchen by sight.

To the 9th cross interrogatory he says: He knows nothing of the matters here inquired of.

To the 10th, 11th, and 12th cross interrogatories he says: He knows nothing of the matters here inquired of.

To the 13th cross interrogatory he says: He knew of the act of Congress mentioned in this interrogatory, and knew of it shortly after its passage, some 20 years ago; it was generally known among the citizens of Mobile as other laws of Congress are, and has heard many persons speak of it, to wit, Joshua Kennedy, John Elliott, Phillip McLoskey, and many others.

To the 14th cross interrogatory he says: He knows of the city of Mobile making a general claim to the front property, probably including that named, but he knows of no suit brought, but has heard so.

To the 15th cross interrogatory he says: In 1824, he did not know of any street bearing the name of North Boundary street; the northern part of the city was known as the Orange Grove, and was said to belong to Jas. Innerarity, and does not believe the city survey was made this far north; the limits of the city are the same now as then; subsequently, surveys have been made, and the streets extended northwardly.

To the 16th cross interrogatory he answers: He does not know what influence the grant to the mayor and aldermen had upon the property of others.

To the 17th cross interrogatory he says: Joshua Kennedy was in general well acquainted with the laws relating to land titles, and was watchful as to what affected titles to property in Mobile; Joshua Kennedy did know of the act of Congress before mentioned.

To the 18th cross interrogatory he answers: Joshua Kennedy was said to own property in all parts of the city, and witness does not know which way his interests preponderated.

To the 19th cross interrogatory: He knows the property named, but does not know the present holders thereof, and cannot answer the remainder of this question.

To the 20th cross interrogatory: He knows of persons having compromised with the city of Mobile, for property in front of the city, by

report; does not know what grounds were the subject of said compromise, nor the terms.

To the 21st cross interrogatory he answers: The paper marked A, and annexed to the interrogatory, is in the handwriting of Saml. H. Garrow, but knows nothing farther about it.

To the 22d cross interrogatory he says: He knows nothing farther of benefit to either party.

CHESTER ROOT.

Sworn to and subscribed before me, this 24th of March, 1845.
P. HAMILTON, *Commissioner*.

Jos. Krebs's testimony.

Joseph Krebs, a witness for plaintiff, being produced and sworn, this 27th of March, 1845, at the office of P. and T. Hamilton:

To the 1st direct interrogatory answers: He knew Joseph E. Collins, who was formerly a surveyor of the Spanish Government; witness's acquaintance with Collins commenced about 1806, at which time Collins moved to Pascagoula, as commandant of that territory, and continued to about 1810.

To the 2d interrogatory he answers: He knew Elizabeth Wilson, his wife; she was called Betsy Wilson, and frequently saw them in company; Collins treated and addressed her as his wife; Betsy Wilson and Collins were married about 1806 or 1807; witness knew them both before they were married; they lived together as man and wife till his death, in or about 1811.

To the 3d interrogatory he says: In 1809, witness saw two of their children; their names he did not then know; he became better acquainted with George and Sidney, who were small children, after the death of their father; witness took George home with him, and had him in his family a year or so; witness continued to know George and Sidney till 1829 or 1830; he lost sight of George and Sidney much about the same time, in 1829 or 1830.

To the 4th interrogatory he says: That George was for some time employed as a printer, he thinks with Mr. Sanford; Sidney, witness thinks, lived in the country; he only saw him once in a while; they lived in Mobile about 5 years; they may have lived longer, but that is all witness can speak to.

To the 5th interrogatory he says: He knows the land mentioned in this interrogatory, but he does not know who claimed the land from 1806 to 1813; he recollects an old shed formerly on that land, but who erected it witness does not know; his acquaintance with the land in question does not extend farther back than 1825; he never had any conversation with either Wm. E. Kennedy or Joseph Collins in the matter.

To the 6th interrogatory he says: That, subsequent to 1826, and before 1829, Joshua Kennedy at one time, in the presence of George Collins and of the witness, at the store of witness, spoke of the land, and the claim of the boys to it, and remarked that he wanted to buy the

claim of the boys, (as he called them,) not (he said) that their claim was worth any thing, but he wanted to buy it so as to have no difficulty; previously to this, George had spoken of suing for the land, but he had not done so; this is the substance of the conversation, so far as witness recollects it.

In answer to the 7th interrogatory he answers: He does not believe he knows any thing more.

Answers to cross interrogatories.

To the 1st interrogatory he says: He speaks of his own knowledge, when he says Joseph E. Collins and Elizabeth Wilson lived together; he did not see them married, and does not know whether or not they were married; his impression is they were not, though she was always called Mrs. Collins about Pascagoula; witness saw them in company at Collins's house, in Pascagoula, in 1809 or 1810; a Mr. Dreux, of New Orleans, was also present; Collins was not a man of much show, and witness never saw him introduce Betsy Wilson formally to anybody; witness heard at Pascagoula that they were not married.

To the 2d interrogatory he says: Collins, from 1805 to 1811, did not visit Mobile very frequently; he did not spend much of his time here; witness only heard of his having come to Mobile once during that time, and thinks he never brought Betsy Wilson with him.

To 3d interrogatory he says: He saw two children at Collins's house, in 1809, who were, he thinks, George and Sidney; one of them was then an infant, and the other 2 or 3 years old; witness's last visit at Collins's house was in 1809 or 1810; he cannot answer with more particularity.

To the 4th interrogatory: He never heard Wm. E. Kennedy or Joseph E. Collins say any thing about it.

To the 5th interrogatory he says: He cannot give a more particular answer to this inquiry than already given; he does not remember whether anybody else was present or not; Joshua Kennedy said something about the Price claim, and something about Kitchen, at a former time, but the recollection of witness is so vague he can give no particulars.

To 6th interrogatory: He knows nothing about the land as early as 1812 and 1813.

To the 7th interrogatory he says: In 1829 and 1830, these lands were not near so valuable as now, and to some extent their value was uncertain; he should think, though, it must have been worth from $8,000 to $10,000; marsh lands in the upper part of the city were then not much in demand, but people were beginning to look upon them as valuable and desirable property; these lands have been filled up since 1830 by Kennedy, or by purchasers under him; Joshua Kennedy filled the land up, and built a wharf thereon; to fill land of this kind up was considered very costly in 1830; some land below had been filled up before then, and some were not willing to engage in it.

To the 8th interrogatory he says: He knew these lands in 1824–'5;

they were not very valuable then, but they began to rise before 1830; previous to 1825, it would have cost more to fill this land up than it was worth; their value then was nominal.

To the 9th interrogatory he says: In 1820 this land, except about 50 yards deep on Royal street, was marshy, and some of it under water, and accessible only by boat; in 1829 and 1830 a portion of it was filled up, but how much witness does not know; in 1829 and 1830 this was suburb property; it was about one square beyond the business part of the city, which then extended up to St. Michael street; all this property, (except the improved portion,) was liable to be overflowed to about 50 yards east of Royal street; this property, in 1829–'30, was worth from $8,000 to $10,000—not much in demand; the reclamation of this land was costly; almost immediately after 1830, this property grew very valuable; Joshua Kennedy, and those who had purchased from him, filled it up and helped its increase in value; as already answered, witness estimates the cash value of this land in 1829–'30 was $8,000 to $10,000, without any improvements.

Examination continued to to-morrow, 27th March, 1845.

To the 10th interrogatory he says: He knows of Joshua Kennedy's purchase of the claim of George Collins; of the purchase of Sidney's claim he knows only from George; he did not see the money paid, but knows of its payment from Kennedy himself; the purchase money was much below the value of the land, not more than a fourth or a fifth of its value in witness' judgment.

To the 11th interrogatory he answers: The usual mode of contracting marriages in this country in Spanish times was before a priest, and by publication of the banns; this was the legal mode, and the only legal mode, according to witness's knowledge; witness never knew of a marriage made in any other way.

To the 12th interrogatory he says: There was always a priest in Mobile from 1805 to 1812; in 1804 or 1805 Father Bojoi was the priest; after his death Father Leonard, (or some such name,) was the priest till about 1812, when Father Besento Hener became the priest, as near as witness remembers; Pascagoula was a part of the parish of the church of the Holy Conception of Mobile; the priests occasionally visited Pascagoula during that time; the services of the priest could always be obtained by those who paid for them.

To 13th interrogatory he says: He was acquainted with the customs and habits of the people during Spanish times, from 1805 to 1813, in Pascagoula; he was born and raised in Pascagoula, with occasional absences; witness lived from his birth to 1816 at Pascagoula. The parties wanting to marry obtained the consent of parents, then applied to a priest, who published the banns in church, and then performed the ceremony.

To the 14th interrogatory: This was the only mode of marrying, and of course persons coming together in any other way and cohabiting together would have been considered as living in concubinage.

To the 15th interrogatory he says: Marriages and baptisms were always recorded by the priest, and their records were much valued by the people, as being the record of their marriages; they were oftentimes the only family record preserved.

To the 16th interrogatory he says: Pascagoula at that time was thinly settled, and marriages would be generally known by the inhabitants.

To the 17th interrogatory he answers: He has stated every thing he can think of of benefit to the parties.

JOSEPH KREBS.

Sworn to and subscribed by the witness, in my presence, this 27th March, 1845.

P. HAMILTON.

Exhibit A to testimony of Jacques Chigizola.

This indenture, made this twenty-first day of December, in the year of our Lord one thousand eight hundred and twenty-two, between Joshua Kennedy, of the county of Baldwin, and State of Alabama, of the first part, and Jacques Chigizola, of the city and county of Mobile, of the second part, witnesseth: That the said party of the first part, for and in consideration of the sum of five hundred and sixty dollars, money of the United States to him in hand well and truly paid by the said party of the second part, at and before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, and the said party of the first part therewith fully satisfied, content, and paid, have given, granted, bargained, sold, aliened, enfeoffed, conveyed, and confirmed, and by these presents do give, grant, bargain, sell, alien, enfeof, convey, and confirm, to the said party of the second part, and to his heirs and assigns forever, all that lot, piece, or parcel of land, situate, lying, and being in the city of Mobile, beginning at a point on the north side of St. Anthony street, at the distance of one hundred feet west of Water street; thence running north one hundred feet, and extending eastwardly parallel with St. Anthony street, with the said breadth of one hundred feet across Water street to the river Mobile, bounded south by St. Anthony street, east by the river Mobile, and on all other sides by lots belonging to said Kennedy, excepting out of said boundary Water street, as the same is or shall be laid off by the corporation of the city of Mobile; together with all and singular the profits, privileges, and advantages, with the appurtenances to the same belonging, or in anywise appertaining; also all the estate, right, title, interest, property, claim, and demand whatsoever, of the said property of the first part, of, in, and to the same, and of, in, and to every part and parcel thereof. To have and to hold all and singular the above described tract or lot of land and premises, with the appurtenances, unto the said party of the second part, his heirs and assigns, to the only proper use, benefit, and behoof of the said party of the second part, his heirs and assigns forever. And the said Joshua Kennedy does for himself, and for his heirs, executors, and administrators, covenant and grant, to and with the said party of the second part, his heirs and as-

signs, that he is the true, lawful, and right owner of all and singular the above described land and premises, and to every part and parcel thereof, with the appurtenances thereunto belonging; and that the said land and premises, or any part thereof, at the time of sealing and delivery of these presents, are not encumbered by any mortgage, judgment, execution, or limitation, or by any encumbrance whatsoever, by which the title of the said party of the second part, hereby made or intended to be made for the above described land and premises, can or may be changed, charged, altered, or defeated in any way whatever; and also that the said party of the first part now has good right, full power, and lawful authority, to grant, bargain, sell, and convey the said land and premises in manner aforesaid; also that he will warrant, secure, and forever defend, the said land and premises unto the said Jacques Chigizola, his heirs and assigns forever, against the lawful claims and demands of all and every person and persons, freely and clearly freed and discharged of and from all manner of encumbrance whatsoever.

In witness whereof the [said] Joshua Kennedy has hereunto set his hand and seal, the day and year first above written.

JOSHUA KENNEDY. [SEAL.]

Signed, sealed, and delivered in presence of—
JAMES M. GOODWIN,
CHAS. HEARE.

STATE OF ALABAMA, *Mobile county:*

Personally appeared before me, Hugh H. Rolston, clerk of the county court in and for said county, the above named Joshua Kennedy, who acknowledged that he signed, sealed, and delivered the foregoing deed, on the day and year therein mentioned, to the said Jacques Chigizola.

Given under my hand and seal, this 21st day of December, A. D. 1822. HUGH H. ROLSTON, *Clerk.* [SEAL.]

Exhibit B to testimony of Jacques Chigizola.

STATE OF ALABAMA, *Mobile county:*

Know all men by these presents, that I, Jacques Chigizola, of the aforesaid State and county, in and for the consideration of four hundred and fourteen dollars, to me in hand paid by Joshua Kennedy, the receipt of which is hereby acknowledged, have relinquished, sold, and forever quit claimed, and do hereby sell, relinquish, and forever quit claim, unto the said Joshua Kennedy, his heirs and assigns, forever, all those two pieces or parcels of land situate in the city of Mobile, bounded and described as follows: Beginning at a point on the north side of St. Anthony street, at the distance of one hundred feet west of Water street; thence running north fifty feet, and extending eastwardly parallel with St. Anthony street, with the said breadth of fifty feet to the west side of Water street, and beginning at a point on the east side of Water street, at the distance of fifty feet north of St. Anthony street;

thence running northwardly on the east side of Water street fifty feet, and extending back eastwardly with the said breadth of fifty feet to the river Mobile; the first mentioned lot bounded on the north side by a lot belonging to Joseph Krebs, and on all other sides by lands belonging to said Kennedy; and the second mentioned lot bounded south by a lot belonging to Joseph Krebs, east by the river Mobile, west by Water street, and north by land claimed by Joshua Kennedy. To have and to hold the said granted and bargained lots, pieces, or parcels of land, with the privileges and appurtenances thereunto belonging, to the said Joshua Kennedy, his heirs and assigns, forever. And I, the said Jaques Chighizola, shall and will by these presents warrant and defend the aforementioned land, lots, pieces, or parcels of ground from and against myself, my wife, my heirs and assigns, (but not from or against any other person or claim whatsoever,) unto the said Joshua Kennedy, his heirs and assigns, forever.

In witness whereof I have hereunto set my hand and seal at the city of Mobile, this 22d day of September, A. D. 1826.

J. CHIGHIZOLA. [L. S.]

DIEGO MCBOY,
LEFROY DOLIVES.

THE STATE OF ALABAMA, *Mobile county, ss:*

Personally appeared before me, Hugh H. Rolston, clerk of the county court in and for said county, the aforesaid Jacques Chighizola, who acknowledged that he signed, sealed, and delivered the foregoing deed, on the day and year therein mentioned, to the said Joshua Kennedy.

Given under my hand and seal, this twenty-second day of September, A. D. 1826.

HUGH H. ROLSTON, *Clerk.* [L. S.]

Exhibit C to testimony of Jacques Chigizola.

Know all men by these presents, that I, Jacques Chigesozla, of the city and county of Mobile and State of Alabama, in consideration of the sum of three hundred dollars to me paid [by] Joseph Krebs, of the same place, the receipt whereof I do hereby acknowledge, do by these presents give, grant, bargain, sell, and convey unto the said Joseph Krebs, his heirs and assigns, a certain piece, parcel, or lot of land, situate in the said city, county, and State aforesaid, bounded and described as follows, to wit: On the east by Water street, on the north by lands of Kennedy's, and on the west by the same, and on the north by the grantor, the said Jacques Chicksola, having fifty feet front on Water street, with the same number of feet in rear, and extending back from Water street one hundred feet; and the said Jacques Chiegazola, for the consideration above mentioned, do by these presents convey to the said Joseph Krebs, his heirs and assigns, a certain other lot, piece, or parcel of land, situate in the said city, county, and State aforesaid; bounded on the north by the grantors, on the east by Mobile river, on

the south by St. Anthony street, and on the west by Water street, having fifty feet front on Water street, together with all and singular the privileges and appurtenances to said lots, pieces, or parcels of land in any wise appertaining. To have and to hold the above granted premises to the said Joseph Krebs, his heirs and assigns, to his and their use and behoof, forever; and Louise, wife of the said Jacques Chigizola, in consideration of the sum of one dollar to her paid, the receipt whereof she doth hereby acknowledge, doth hereby release to the said Joseph Krebs, his heirs, all her right of dower in the aforementioned premises.

In testimony whereof, I, the said Jacques Chigazola and Louise, my wife, have hereunto set our hands and seals, this seventeenth day of August, in the year of our Lord eigh[teen] hundred and twenty-four.

G. CHIGHIZOLA, [L. S.]
LOUISE CHIGHIZOLA. [L. S.]

Signed, sealed, and delivered, in presence [of]—
LEON NICHOLAS,
THOMAS HUBBARD.

STATE OF ALABAMA, *Mobile county:*

Personally appeared before me, Hugh H. Rolston, clerk of the county court in and for said county, the above named Jacques Chighizola and Louise, the wife of the [said] Jacques Chighizola, who acknowledged that they signed, sealed, and delivered the foregoing deed on the day [and] year therein mentioned, to the said Joseph Krebs; and the said Louise, wife as aforesaid, being examined by me, private and apart from her said husband, acknowledged that she signed, sealed, and delivered the same without any fear, threats, or compulsion of her said husband.

Given under my hand and seal, this the seventeenth day of August, A. D. 1824.

HUGH H. ROLSTON, *Clerk.* [L. S.]

Exhibit A, to A. Batre's testimony—T. A. Hamilton, commissioner.

Know all men by these presents, that we, Miguel D. Eslava and L. Lanzos, his wife, of the city of Mobile, county of Mobile and State of Alabama, *and State of Alabama*, in consideration of the sum of four thousand and two hundred dollars to us paid by Charles Batré and Adolphe Batré, of the same place, the receipt whereof we do hereby acknowledge, have remised, released, and forever quit claimed, and by these presents do remise, release, and forever quit claim, unto the said Charles Batré and Adolphe Batré, in their actual possession now being, their heirs and assigns, a certain lot, piece, or parcel of land, situate, lying and being in the city of Mobile, county of Mobile and State of Alabama, bounded and described as follows: On the east by Water street, on the north by lands now or lately belonging to Kennedy, and on the west by the same, and on the south by land now or lately belonging to Jacques Chighizola, having fifty feet front on Water street,

with the same number of feet in rear, and running back from Water street one hundred feet. And the said Miguel D. Eslava and his wife, for the consideration above mentioned, do by these presents remise, release, and forever quit claim, to the said Charles Batre and Adolphe Batre, a certain other lot, piece, or parcel of land, situate in the said city of Mobile; bounded on the north by land now or lately belonging to Jacques Chighizola, on the east by Mobile river, on the south by St. Anthony street, and on the west by Water street, having fifty feet front on Water street, being the same lots, pieces, or parcels of land which Joseph Krebs conveyed by deed bearing date the twenty-first day of June, A. D. 1831, to the said Miguel D. Eslava. To have and to hold the aforesaid premises, with all the privileges and appurtenances to the same belonging or in anywise appertaining, unto the said Charles Batré and Adolphe Batré, their heirs and assigns, to them and their sole use, forever; so that neither we, the said Miguel D. Eslava and L. Lanzos, his wife, nor our heirs, nor any person or persons claiming under us or them, shall, at any time hereafter, by any way or means, have, claim, or demand any right or title to the aforesaid premises or appurtenances, or to any part or parcel thereof, forever.

In testimony of which we have hereunto set our hands and seals, the twenty-third day of December, in the year of our Lord eighteen hundred and thirty-one.

M. D. ESLAVA, [L. S.]
L. LANZOS ESLAVA. [L. S.]

Signed, sealed, and delivered, in presence of us—
ARTHEMISE LAFOREST,
HUGH H. ROLSTON.

STATE OF ALABAMA, *Mobile county, ss:*

Personally appeared before me, Hugh H. Rolston, a notary public in and for said county, the above named Miguel D. Eslava and L. Lanzos his *acknowledged* who acknowledged that they signed, sealed, and delivered the foregoing deed on the day and year therein mentioned, to the said Charles Batre and Adolphe Batre; and the said L. Lanzos, being examined by me on a private examination, acknowledged that she done the same as her voluntary act and deed, freely, without any fear, threats, or compulsion of her said husband.

Given under my hand and seal this *this* thirteenth day of March, in [L. S.] the year of our Lord eighteen hundred and thirty-two.

HUGH H. ROLSTON, *Notary Public.*

STATE OF ALABAMA, *Mobile county:*

I, Drury Thompson, clerk of the county court of Mobile county [and] State aforesaid, do hereby certify, that the foregoing, contained in the two first pages of this sheet, is a true and correct transcript of the record of a deed from Miguel D. Eslava and wife, to Charles Batre and Adolphe Batre, as the same remains of record in my office, in book K, pages 202 and 203.

In testimony whereof I have hereto affixed my name, and the seal of my office, at office, this the fifth day of March, in the year of our Lord one thousand eight hundred and forty-five.
[L. S.]
D. THOMPSON, *Clerk*.

Exhibit A—to Innerarity's testimony.—A.—Referred to in Innerarity's testimony.

Whereas by virtue of and under a title from the Spanish Governor Gayoso, granted to Alexander Baudin, of the former district, and present county of Mobile, bearing date the tenth day of July, one thousand seven hundred and ninety-eight, and by a sale from the said Alexander Baudin to me, I claim a certain lot or parcel of land within the limits of the town of Mobile, containing about seven acres, more or less, bounded north by the plantation of John Forbes & Co., called Poplar Grove, west by Royal street, and having about thirty-two perches front on the line thereof; south by St. Louis street, (being the street that runs west southwardly from the river, between the aforesaid ground and a lot belonging to James Innerarity; and thence by the south side of the lot and house formerly belonging to the or Baudin family, now to Lewis Judson, esq., and lots now or lately belonging to the Cain family; and thence onwards by the north side of the late Thomas Price's house, and between it and a lot belonging to , and so forth, to the woods,) and eastwardly by the river Mobile. And whereas by written articles of agreement, dated the twenty-first of November, eighteen hundred and six, lawful entered into by me with the late Joseph E. Collins, then of Mobile, deputy surveyor general of West Florida, who had also a title, permit, or order of survey for the same ground above described; it was stipulated to divide the same between us, the upper or northern half to belong to me, and the southern to the said Collins; and moreover, on my part, that I shall fence, and improve, and ditch the said ground to prevent its forfeiture; and having made and given evidence of improvement thereon before the land commissioners, east of Pearl river, under my particular claim aforesaid, no evidence having been given by the person who laid in the claim of the said Joseph E. Collins. And whereas James Innerarity, of Mobile, hath been appointed by the orphan's court of Mobile county the administrator of the estate of said Joseph E. Collins:

Now, be it known, that from regard to the memory of the said Jos. E. Collins, and for the farther consideration of one dollar to me in hand paid by the said James Innerarity, administrator of said estate, the receipt whereof is hereby acknowledged, I, the said William E. Kennedy, have bargained, sold, remised, and quit-claimed, and by these presents, do bargain, sell, remise, and quit-claim, unto the said James Innerarity, administrator of said estate, and to all and every and each person who shall purchase the said described premises, or any part thereof, at an administrator's sale of real estate, made in pursuance of the laws thereto applicable, and the legal order of the court having the power to make such order, and all and every and each of , all the

right and title that I now have, or hereafter may have, to the lower or southern half of the said described ground, to be surveyed and laid off in the manner and form described in the articles of agreement before mentioned, (which agreement I hereby confirm and ratify,) together with all and singular the hereditaments and appurtenances thereto belonging, or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and also all the estate, right, title, and interest, and claim or demand whatsoever of me, the said William E. Kennedy, either in law or in equity, in and to the above and southern half of the said ground, and every part and parcel thereof. I do furthermore covenant and bind myself and my heirs, in the event of my title or right to the said land as aforesaid being confirmed, or a certificate of confirmation or patent issuing for the same from the United States Government, that , and a conveyance in the law shall be executed by me, or my heirs, to the said James Innerarity, administrator, or to his legal assigns, or the heirs of the said Collins, as the case of right may be, as he, they, or any of them, shall or may demand for the premises.

In testimony whereof I have hereunto set my hand and seal, at Mobile, this second day of March, one thousand eight hundred and twenty.

WILLIAM E. KENNEDY. [SEAL.]

Signed, sealed, and delivered, in presence of—
JOSHUA KENNEDY,
DAVID RUST,
HENRY V. CHAMBERLAIN.

STATE OF ALABAMA, *Mobile county:*

Personally appeared before me, Hugh H. Rolston, clerk of the inferior court in and for said county, the above named William E. Kennedy, who acknowledge that he signed, sealed, and delivered the foregoing deed, on the day and year therein mentioned, to the aforesaid James Innerarity, and also the annexed articles.

Given under my hand and seal, this second day of March, A. D. 1826.

HUGH H. ROLSTON, *Clerk.* [L. S.]

Articles to the foregoing deed.

MOBILE, 21*st November*, 1806.

Articles of agreement entered, made, and concluded by and between Captain Joseph Collins, of West Florida, of the one part, and William E. Kennedy, of said province, of the other part, witnesseth:

That the said Joseph Collins, for the condition hereafter mentioned, hath agreed to give and convey all his right and title to the north half of a lot situated between Royal street and Mobile river, bounded on the north by the plantation of Pantin, Leslie & Co., on the west by Royal street, on the south by St. Louis street, and on the east by the river Mobile. It is to be understood, that each party's half of said lot must

Map A.

677.

front on Royal street, and that the lot is to be divided into two equal parts, from which street a line is to be drawn to the Mobile river, so as to divide the front on said river equally between the parties, and the northern half, bounding on Panton and Leslie & Co., is to belong to said William E. Kennedy, his heirs, administrators, or assigns.

The condition of this obligation is such, that the above named William E. Kennedy, on his part, is to improve said lot, so that by fencing and ditching that said lot may not be forfeited, and that he will begin to improve said lot immediately.

WILLIAM E. KENNEDY. [L. S.]

Signed, sealed, in presence of us—
BENJAMIN DUBROCA,
ZENON ORSO.

STATE OF ALABAMA, *Mobile county:*

I, Drury Thompson, clerk of the county court of said county, certify, that the foregoing is [a] transcript of the record of a deed from William E. *E.* Kennedy to James Innerarity, administrator, as also an agreement between William E. Kennedy and Joseph Collins, as recorded in my office, in book C, pages 217, 218, 219, and 220.

Given under my hand and seal of office, the first day of February, A. D. 1843.

D. THOMPSON, *Clerk.* [L. S.]

(Here follows map A, referred to in the testimony of Chas. L. Delage.)

The yellow lines on this map show the boundaries of Th. Price claim, and the red lines enclose that part claimed by Joseph Collins.

Surveyed and drawn at the instance of Thos. A. Hamilton, the commissioner, by

CHARLES L. DELAGE,
Surveyor.

Mobile, April 5th, 1845.

(Here follows map B, referred to in the testimony of Chas. L. Delage.)

The property claimed by Joseph Collins is enclosed in this map by the yellow lines, and is bounded on the north by the plantation of Panton, Leslie & Co.

This map surveyed and drawn by

CHAS. L. DELAGE, *Surveyor.*

Mobile, March 8th, 1845.

(Here follows map C, referred to in the testimony of Chas. L. Delage.)

This map represents a part of the "Price claim," as bordered by the red lines.

The yellow colored part shows the Alexander Baudain claim, and that portion of it colored with a deep shade of yellow is the south half of it, containing 256,806 feet, superficial measure.

The red colored part as included between Royal street, the north side of Bloodgood street, the river, and the north line of Prince claim, up to Royal street, shows that of the Orange Grove, which has been filled up and contains 2,244,776 feet, superficial measure.

Surveyed and drawn, at the instance of Joshua Kennedy's heirs, by order of Mr. Aiken.

Signed by CHAS. L. DELAGE, *Surveyor.*

Mobile, March 21st, 1845.

Commissioner's certificate.

STATE OF ALABAMA, *Mobile county:*

I, Malcolm J. McRae, commissioner, duly appointed by the honora ble the circuit court of the United States for the southern district of Alabama, do hereby certify, that, by virtue of the commission hereto annexed, I caused Thomas Malone, Henry Lewis, Charles Bancroft, Jas. G. Lyon, Jonathan Emanuel, Theophilus L. Toulmin, Henry Chamberlain, Hugh Monroe, Josiah Wilkins, Thomas G. Newbold, P. McLoskey, M. D. Eslava, J. J. V. Wanroy, J. W. Moore, Chas. Steale, and Wm. H. Platt, to come before me at the times specified in each of these depositions, and in the following places, to wit: T. Malone at the office of Charles A. Marston, in the city of Mobile; Henry Lewis at my office, Charles Bancroft, James G. Lyon, T. L. Toulmin, Hugh Monroe, Henry Chamberlain, P. McLoskey, J. W. Moore, Charles Steele, W. H. Platt at my office; J. J. Wanroy, and Jonathan Emanuel, and M. D. Eslava, and Josiah Wilkins, and T. G. Newbold at their respective offices, and being each duly sworn, testified as set down. And the testimony of each witness being reduced to writing in presence of the witness, and read over to him, was subscribed by him in my presence.

In testimony whereof I have hereto set my hand and seal, this 23d April, A. D. 1845.

Attest: M. J. McRAE, [SEAL.]
Commissioner.

Commission.

CIRCUIT COURT OF THE UNITED STATES,
Southern district of Alabama.

To Malcolm J. McRae, and William Lewis, esq.

Whereas, we repose in you full confidence, we have appointed you, and do give you, and each of you, full power and authority to examine all such witnesses as the defendants or either of them, in a certain cause pending in the circuit court of the United States for the southern district of Alabama, in which Sidney E. Collins is plaintiff, and Wm. R. Hallett and Robert L. Walker, executors of the last will and testament of Joshua Kennedy, deceased, J. H. Hastie and his wife, J. G. Aiken

and his wife, A. R. Meslier and his wife, Joshua Kennedy, Augusta Kennedy, Samuel Kitchen, William Kitchen, James Innerarity, Jas. Campbell, and the Branch of the Bank of the State of Alabama, at Mobile, are defendants, may produce before you on interrogatories and cross interrogatories; and we do give you, and each of you, and either of you, full power and authority to call said witnesses before you or either of you, and to examine them on their respective corporal oaths, at such time and place as you may appoint, and do hereby require you to reduce their answers to writing, and to cause the aforesaid witnesses to subscribe the same, and to enclose the same under your hands and seals, or of either of you, unto the court aforesaid. Hereof fail not, and have you before the said court, this commission with your return.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, the 4th Monday of December, 1844, and of the American independence the sixty-ninth year.

JOHN FITTS, *Clerk*.

Issued the 28th day of February, 1845.

JOHN FITTS, *Clerk*.

I, John Fitts, clerk of the circuit court of the United States, for the fifth judicial circuit and southern division of Alabama, do hereby certify, that the within and beforegoing is a true and correct copy of the original commission to Malcolm J. McRae and William Lewis, which was approved by the honorable William Crawford, judge of said court.

In testimony whereof, I have hereunto set my hand and affixed the [SEAL.] seal of said court, at office in the city of Mobile, this 28th day of February, A. D. 1845.

JOHN FITTS,
C. C. C. So. Dis. Ala.

Deposition of Thos. Malone.

The deposition of Thomas Malone, a witness sworn to testify on the interrogatories and cross interrogatories annexed on part of complainants, in a suit wherein Sidney E. Collins is complainant, and William R. Hallett and R. L. Walker, executors of Joshua Kennedy, are defendants.

To the 1st interrogatory he answers: That he lived, from 1802 to April, 1824, in Washington county, in this State, and from April, 1824, to the spring of 1828, at Mobile Point, in Baldwin county; from Mobile Point he went to Dauphin Island, at the mouth of Mobile Bay, where he resided till 1832, when he removed to this place, Mobile, where he remained only a part of a year, and in 1833 he removed to Baldwin county, and after making a crop, he removed to his present residence, in Mobile county, about thirteen miles from the city, where he has resided ever since; he was in the habit, from 1802 to this time, of visiting the city occasionally on business, and has some knowledge of the rise and progress of the city, but cannot state any thing in particular as to it.

To the 2d: That he knows the ground in dispute, and has been on

it at an early period, and has been occasionally on it since 1802; that he cannot testify particularly as to the situation of the property in 1820 or 1824; at that period he resided in Washington county, and only came to the city casually, and paid no particular attention to it; from 1824 to 1832, he resided at Mobile Point and Dauphin Island, and but seldom came to the city, and had no business in this part of the city, and paid no attention to this property; at an early period of his acquaintance with the city of Mobile, that portion of the town above St. Louis street was a marsh, filled with water from the river back towards Royal street, beyond where Water street now is; he cannot state as to the difference of overflow at high and low tides, nor can he state particularly as to the condition of any of it in 1829 or 1830; his testimony on this point can only refer generally to this property, from his first visits to the city, in 1802 and 1803, to his removal to Mobile Point in 1824; after which time he had seldom occasion to visit this part of the city; in 1829 and 1830, witness was not, except casually, in the city; in 1832 or 1833, he thinks that the business had extended up to St. Louis street, on the river, but is not positive; would not have considered the property in the business part of the city, although in 1832 and 1833 he thinks that some business was done about this property; he cannot state particularly as to the exact business part of the city; his recollection on this subject is vague and uncertain, but he is of the impression that the main business part of the city was from below Government to about St. Michael street.

To the 3d: He cannot state whether the property was considered desirable or not, or what kind of value it had; he has no recollection on the subject; he recollects that, about the year 1828, or between the years 1824 and 1830, Gordon undertook to fill up some property between Water and Commerce and north of St. Michael street, which was considered at the time by many as a rather speculative project; as to the general opinion on the subject, or disposition to engage in it, witness knows nothing; and the whole matter is so long since, that witness cannot speak with any certainty.

To the 4th: He cannot pretend to fix any price nor form any idea as to its value at the time referred to; it was entirely out of his line of business, and he had no opinion on the subject.

To the 5th: He says that improvements have extended up town, since 1829 and 1830, a considerable distance; how far witness cannot say, not being in the city till 1832 or 1833; he cannot state particularly, except that, about the year 1833, he had an offer for some property on Conti street above what it had cost him, and about the same time he observed that there was a general advance in property throughout the city; and, in the upper part of the town, does not know that up town property advanced, except from the general fact of an unusual advance of all kinds of property about this time; he cannot state as to the anticipated growth of the city, except that after the sale of the Orange Grove in lots, by the original purchasers, property began to acquire, in the

upper part of town, a very extraordinary and speculative value, and improved very rapidly, and much capital has been invested up town.

To the 6th: He cannot say anything on the subject of his own knowledge.

To the 7th interrogatory he says: That he was present at the sale of the Orange Grove tract; that there was considerable competition among the bidders; witness was of the opinion that there were two parties or companies bidding against each other, and that Bloodgood represented one, and A. W. Gordon the other, and that the property sold for forty thousand dollars; that he was of opinion that it was a good sale, and thinks that was the opinion of others, so far as his knowledge goes

To the 8th he says: He would consider the property in dispute $\frac{1}{3}$ more valuable, in 1829 and 1830, than an equal portion of property situated adjoining this in the Orange Grove; witness speaks of this property as if both were unimproved; it being nearer the heart of the city, would be more valuable.

To the 9th interrogatory: He cannot say.

To the 10th: He cannot answer any more fully than as heretofore answered

To the 11th: He cannot answer, knowing nothing about assessments of property.

To the 12th: He knows nothing.

To the 1st, 2d, and 3d cross interrogatories he states: That he cannot say; that he is not sufficiently acquainted with the city to even locate properly, from his own recollection, the property in question, much less in blocks and squares, and much less what might be the value of the lots or squares.

To the 4th he says: The city was growing, but not rapidly, at the time referred to. The tendency of improvements of the city were upward, and have always been so.

To the 8th he says: That he cannot testify, particularly, as to any of the sales referred to; he only knows, from hearsay, that there were sales, and some at high prices.

To the 9th he says: That he recollects having a conversation with Kennedy about the low ground, between the rise in front of Royal street and the river, between the years 1824 and 1832, in which Kennedy stated that he considered the land worth $20,000; at this time there was very little improvement on the property, and if any wharf was on it, witness does not recollect it; Kennedy did not say that he would take twenty thousand dollars for it, but casually made the remark, that it was worth that sum; he thinks that there was no filling up at this time on the property east of Water street.

To the 10th he answers: That he knows nothing further that would be of any advantage to either party; at the instance of plaintiff's counsel he states that, in 1802 or 1803, Price offered to sell witness a tract of land, which witness thinks was either three hundred or three hundred and fifty acres, lying, as he understood at the time from the remark of

Price, back of the town, he offered it for $500; the boundary or particular location was not described to witness.

(Signed,) T. MALONE,

Subscribed and sworn to before me, this 2d [day of] April, 1845.

M. J. McRAE, *Com'r.*

Deposition of Henry Lewis.

Deposition of Henry Lewis, a witness sworn on part of complainants to testify on the interrogatories and cross interrogatories annexed, deposes and says:

To the 1st interrogatory: That he has lived in Mobile the most of his time, since the fall of 1825, and has been conversant with the growth and progress of the city during the most of that period.

To the 2d interrogatory he says: That he knows the land in dispute and referred to, and has known it since 1825; in 1829 and 1830 he thinks it was mostly marsh; can't say how far towards Royal street the water extended. It was at that time in the suburbs of the city, and not in the business part of the city; the business part of the city extended up the river, to about St. Michael street.

To the 3d interrogatory he says: That he cannot speak positively as to the questions in this interrogatory, but thinks that property in the location and situation of the property referred to was not in much demand, and had not any very definite or fixed value, and never heard of any estimate being put on it. Can't say as to the cost and practicability of filling up such property, never having thought about the matter at that time.

To the 4th he says: That he was not a very good judge of the value of property, but would not have put a high value upon it; never heard the value estimated at that time, and could not put any estimate on it.

To the 5th he says: That improvements have extended up town, since the period mentioned, a good distance, but how far witness cannot say; he thinks that property began to attract public notice, about the spring of 1834, in the upper part of the city; thinks that the growth of the city upwards has surpassed the general expectation of the citizens at the time referred to, but cannot say how far; the causes are the investment of capital and the increase of trade to the place, and of population.

To the 6th he answers: That he cannot say anything particularly as to this question.

To the 7th he answers: Was present at the sale referred to, but don't recollect particularly as to the competition among the bidders; the property brought about $40,000; witness thought it was a high sale, and heard others say the same.

To the 8th he answers: That the property in question would be considered more valuable now, and also in 1829 and 1830, than property lying contiguous above; but how much can't say.

To the 9th he says: That in 1820 he was not here, and in 1825 he would not have given much for it.

To the 10th he says: That he should think about the year 1834, and thereafter.

To the 11th he answers: He can't testify, never having paid any attention to assessments

To the 12th he answers: That he knows nothing further.

To the 1st, 2d, and 3d cross interrogatories he says: That he cannot answer any more particularly than in the direct interrogatory No. 4.

To the 4th he says: That in the years 1829 and 1830 the city was steadily improving, and the indications more in favor of the advancement of property up the river.

To the 8th he answers: That he cannot state as to the times of the sales referred to, or to the amounts of the purchase, but merely recollects that there were such sales.

To the 9th he says: That he knows of no offer ever having been made for it, either from Kennedy himself, or from any one else.

To the 10th he says: That he cannot state anything material to the defendants, or complainants, except as stated above.

(Signed,) H. LEWIS.

Sworn to and subscribed before me, this 1st day of April, 1845.

M. J. McRAE, *Com'r*.

Deposition of Charles Bancroft.

Deposition of Charles Bancroft, on the interrogatories and cross interrogatories hereto attached in the case of Sidney E. Collins, complainant, vs. Wm. R. Hallett et al., defendants, pending in the U. S. circuit court at Mobile:

To the 1st interrogatory he answers: That he has resided in Mobile ever since the year 1817, and has been conversant with the growth and progress of the city ever since that time.

To the 2d he says: He is acquainted with the property referred to, and knew it at the periods referred to. In 1820 and 1825 witness thinks that this property was mostly a marsh; there was a shell bank about where Water street now is; in front of this it was considered the river; this was the landing from the river; back of this bank was a marsh and pond extending back all of ¾ the distance from Water to Royal street. In 1829 and 1830 it was considerably improved, but still low; very high tides came back very near to Royal street; the property not ordinarily overflowed was low; it was considered in the suburbs, and not in the business part of the city. In 1829 and 1830 the business part of the city was between Government and St. Michael streets.

To the 3d he states: That such property was not at this time considered valuable, desirable, or in demand; thinks its value was uncertain and variously estimated, and that not many at that time were able or willing to undertake the reclaiming of such property; can't say as to the trial of the experiment.

To the 4th he says: That in his opinion he does not think that this

property at that time would have been valued at more than five thousand dollars.

To the 5th: Since the years 1829 and 1830 the improvements have extended up town some three or four blocks above this property. Property in this part of the town began to attract public notice, and acquire definite value about the year 1830; and from that period since, the growth of the city since the time referred to has surpassed the general expectation of the citizens at that period greatly. The cause of growth has been the investment of capital up town, and the increase of the trade and population of the place, and a great deal of capital has been invested up town.

To the 6th he says: That he cannot state any thing particularly, except that the up and down town interest was always adverse to each other, and sometimes more violent than at others, and the up and down town influences were brought to bear on and made questions in elections.

To the 7th he answers: That he knows nothing about these sales, not being present.

To the 8th he says: He cannot state what would have been the relative value of the property referred to in 1829 and 1830, or at this time; the property in dispute would at either period have been considered the most valuable, but in what proportion witness cannot say.

To the 9th: He has no idea.

To the 10th he says as before: About the year 1830 and thereafter.

To the 11th he says: As a general rule, for the last fifteen years, property has been assessed above its value; thinks that unimproved property has been assessed at a higher rate than improved in proportion to its value; as to the assessment at a time previous to the last fifteen years, witness cannot testify.

To the 12th: He says nothing further.

To the first cross interrogatory he says: That he cannot state; that he did not think of the property at that time sufficiently to form any idea, except a general one.

To the 2d and 3d: He answers as to the 1st cross interrogatory.

To the 4th: He answers in the affirmative generally.

To the 8th: He has no knowledge of any of the facts desired.

To the 9th he states: That he never heard of any offer or valuation by Kennedy, or others.

To the 10th he says: That he can state nothing further.

CHAS. BANCROFT.

Subscribed and sworn to before me, this 31st March, 1845.

Attest: M. J. McRAE, *Com'r.*

Deposition of J. G. Lyon.

The deposition of James G. Lyon, a witness on part of defendants, in the case of S. E. Collins vs. Hallett & Walker, executors of J. Kennedy, taken on the interrogatories and cross interrogatories annexed:

Answer to 1st interrogatory: I have lived in the city of Mobile and its immediate vicinity ever since 1827, and resided at St. Stephen's from 1814 to 1827, and in its vicinity. I have been conversant with the property, growth, and progress of improvements, to some extent, since 1828.

Answer to 2d: I am acquainted with the ground in dispute. I knew very little about it in 1820 and 1825. In 1829 and '30 I occasionally saw it. I do not recollect its condition in 1820 and 1825. In 1829 and 1830 it was marshy in places; and according to the best of my recollection the water at high tide, in places, came nearly up to Royal street. In 1830 this property was above the business part of the city; and about the year 1830, however, improvements began to go up town rapidly, but were still below any part of this property until after that period.

Answer to 3d: This property was not considered as valuable in 1830 as property lower down in the city, and I think at that time had not any fixed value, and was variously estimated. It was by many considered desirable, however, and its value began to improve considerably in 1828, 1829, and 1830. In these years the cost of filling up was considerable, as I have understood. I have, however, little or no personal knowledge of the value of such work.

Answer to 4th interrogatory: I am unable to state the value of the property in question in 1829 and 1830; various estimates prevail as to the same. I do not myself place the value in those years so high as many others do. The surest data from which to form an opinion as to its value would be to refer to the city assessments for those years; and I suppose the books containing the valuation of land and lots in the city will be found in the mayor's office.

Answer to 5th: I cannot tell exactly how far north above this ground the improvements of the city have extended since 1829 and 1830; but wharves, warehouses, &c., having been erected nearly up to Bloodgood street, and by reference to the map it will be seen how far it is from this property to Bloodgood street. Property in the upper part of the city began to attract public notice and increase in value in 1827, and continued to increase till 1836 or 1837. The upward growth of the city since 1830 was more rapid than any one anticipated it would be, and surpassed general expectation. This rapid increase was owing to various causes. Many persons were interested in rendering up town property valuable, and considerable capital was invested in this object; and by many it was believed that the up town part of the city had more material advantages than the lower part of the city.

Answer to 6th: I know of no particular efforts to depreciate up town property in 1830, further than that there was an up town and a down town party, and both parties did the best they could to carry the improvements to their respective ends of the town; owing to the reasons above mentioned, however, the up town party succeeded best.

Answer to 7th: I do know of the sale of the Orange Grove and other property in 1831, or thereabouts, by James Innerarity to John Bloodgood; I think Mr. Bloodgood's bid for the property was $40,000;

the records of the court of chancery of this county will show the exact amount; the general opinion was that the property sold for an enormous price at the time, but in a short time afterwards it was considered to be worth $60,000, or more.

Answer to 8th: The lands, the subject of this suit, I consider more valuable than an equal quantity of the Orange Grove tract, because it is nearer the heart of the city, and for the same reason it was more valuable in 1829 and 1830.

Answer to 9th: I am unable to answer; I did not know the land in question at those dates.

Answer to 10th: Lands above St. Louis street did not come much into notice, so far as I know, till about the year 1828, 1829, 1830, or 1831, or thereabouts.

Answer to 11th: For the last fifteen years property has generally been assessed by the city assessors, according to my opinion, over its real value; frequently I have seen assessments for more than what the property would command in cash, and have frequently known property assessed under its value.

And deponent further saith not.

J. G. LYON.

Sworn to and subscribed, 22 April, 1845.

M. J. McRAE, *Com.*

Answers to the cross interrogatories by complainant.

To 1st interrogatory: I am unable to say what the value of the square of land bounded north by St. Anthony, west by Royal, east by Water, and south by St. Louis street, was in 1829 and 1830; the best data that I know by which to arrive at its value, (and this is not always certain,) is the city assessments for those years; this will be found in the mayor's office, I imagine. I do not know the exact size of the square, nor do I know how many lots of 55 x 100 feet it would make. I believe, however, there are several acres of land in those bounds. This is now considered the most valuable property (unimproved) in the city; its value has very much increased since 1829 and 1830.

To the 2d interrogatory: I cannot say as to the exact value of the lands mentioned in this interrogatory in 1829 and 1830; must therefore refer for it to the tax assessment of the city authorities for those years. I do not know the exact size of the square mentioned, or how many lots it would make of 55 x 100 feet; it is however of considerable size; reference to the city map will show the size, &c.

To the 3d interrogatory: I cannot say what was the value of the property mentioned in this interrogatory in 1829 and 1830; and again refer to the city assessors' books of those years as giving a more correct valuation than I could do at this time.

To the 4th interrogatory: The city was increasing and improving steadily in 1829 and 1830, and the appearances indicate the growth of the town upward on the river. I am unacquainted with the value of

wharf property; and I do not know how many there are opposite the property in question.

To the 8th interrogatory: I know of no sales of property in the neighborhood of my own knowledge; I have heard of several, all which will appear by reference to the records of the county court, where the prices, &c., will also appear. I would state particulars if I had the records before. I have heard of the sale of A. W. Gordon to Leavans and St. John, but do not know the particulars. I do not recollect the date; the records will show the price, size of the lot, and the location.

To int. 9th: I do not recollect to have heard J. Kennedy value the land; nor do I know he was offered $450,000 for it; nor do I recollect to have heard of any other offer.

J. G. LYON.

Sworn to and subscribed before me, this 22 April, 1845.

M. J. McRAE, *Com.*

Deposition of J. Emanuel.

The deposition of Jonathan Emanuel, who being duly sworn, deposes and says, to the interrogatories and cross interrogatories, as follows, to wit:

To the 1st he answers: That he has resided in the city of Mobile since December, 1820, but never paid attention to the value of real estate till late years.

To the 2nd he says: He knew the ground in dispute in the years between 1820 and 1825; the water flowed over most of it. About the year 1829 or 1830, a wharf was extended into the river; at high tides the water flowed about half way between Royal and the present Water street; at this time, 1830, there was no business done on this property excepting at the water, and the business of the city did not reach above St. Michael street.

To the 3d and 4th he answers: About the year 1830, and thereafter, this portion of the city began to attract the attention of persons. I am not acquainted with the cash value of the property at the time, but consider it entirely speculative, as this species of property had, about this time, no distinct value; and but little property was sold until after the Orange Grove sales.

To the 5th and 6th he says: That, since the year 1830, the improvements have extended north about three squares; after the year 1831, sales were made at large prices, and the expectations of speculators at the high prices of 1835 and 1837 of the lots in the neighborhood have not been realized.

To the 7th and 8th he says: That the sale of the Orange Grove and Bayou Chattaugue tracts was made by James Innerarity, in 1831, on a credit for $40,000. The opinions of persons regarding this purchase was not uniform; I considered it cheap at the time. The lands in the present controversy are of more value than a similar extent on the Orange Grove tract.

To the 9th, 10th, 11th, and 12th he answers: That the lands in the

neighborhood of St. Louis street began to acquire value in 1830 and thereafter. I cannot say particularly in regard to the value property bears to the assessments, but generally the assessments are above the cash value.

To the 1st, 2d, and third cross interrogatories he answers: That he does not know the value of this property in 1829 and 1830; but feels satisfied that lots of 50 x 100, would not have had much value at that time.

To the 4th he says: That it is answered in the 10th direct interrogatory.

To the 8th cross interrogatory he answers: That he is not from his own knowledge acquainted with any sale of lots on St. Louis street. He knows of the sale of Gordon to Jones and Mitchell about the year 1833 of the lands on the west side of Water street, on which a cotton press and yard was, for $50,000, payable in ten yearly payments without interest. And also of the sale of A. W. Gordon to J. B. Leavens, in the year 1832, for $100,000, payable without interest in ten yearly payments, for the land on the east side of Water street to the river, on which there was a press and cotton yards, five brick stores, wharf, &c.

To the 9th and 10th: He knows nothing further that will benefit either plaintiff or defendant in the case.

Signed, J. EMANUEL.

Sworn to and subscribed before me, this 27th March, 1845.

M. J. McRAE, *Commissioner.*

Deposition of T. L. Toulmin.

Deposition of T. L. Toulmin, a witness sworn to answer truly the interrogatories and cross interrogatories submitted in the case of Sidney E. Collins vs. W. R. Hallett et al.

To the first interrogatory he answers: That he has lived in the vicinity of Mobile for the last twenty years, or since April, 1825, and has resided within the present limits of the county thirty-eight years, or thereabouts, and has observed the growth and progress of the city during the whole of that time.

To the 2d he answers: That he is acquainted with the land referred to, and knew it in 1820, 1825, 1829, and 1830. In 1820 and 1825 it was a wet marsh near back to Royal street. In 1829 and 1830 it was pretty much in the same situation, but had improved some little. It was overflowed at high water about one-half the distance from Water to Royal streets. It was in the suburbs of the city, and not in the business part. In 1829 and 1830, did not extend to any extent above St. Michael street up the river, and that near the river.

To the 3d he answers: That he considers that its value in 1829 and 1830 was uncertain and variously estimated, and that such property was not in demand. And the practicability and profit of undertaking to reclaim it and fill it up was considered doubtful; so far as witness can say, or has any information, thinks that not many were able or willing at that time to engage in reclaiming such property.

To the 4th he states: That he can form no idea as to the value of the property in 1829 and 1830, as he does not recollect ever having had any opinion on the subject.

To the 5th he says: That the improvements of the city up town has extended, since 1829 and 1830, some three or four blocks; and that he thinks that property up town as near the river as this did not begin to attract public attention until since the years 1832 and 1833; thinks that the growth of the city upwards has surpassed general expectation since 1830, that is, the expectation of the inhabitants at that time; how far it has surpassed general expectation he can't say.

The increase of trade to the place, the location being upwards and near to those bringing produce to the city, the investment of capital, which has been great.

To the 6th he says: There was about this time considerable struggle between the up and down town property holders, but what effect it had on the value of up town property witness can't say.

To the 7th: He recollects the sale of the Orange Grove property, that he thinks it brought about $40,000, which he considered a high price, and heard some others express the same opinion; as to the competition of the bidders he knows nothing.

To the 8th he says: That the property in question would be considered more valuable than the same quantity contiguous in the Orange Grove, but how much more he can't say. It would have been more valuable in 1829 and 1830.

To the 9th: He cannot say, but very inconsiderable.

To the 10th he says: About the year of the sale of the Orange Grove by Innerarity to Bloodgood and others, or shortly afterwards.

To the 11th he says: That he cannot answer of his own knowledge, having but little property in the city.

To the 12th he says: That he knows nothing further that could be material to either party, except as may be stated hereafter in his answers to the cross interrogatories

To the 1st cross interrogatory he says: That he cannot say, not knowing the size of the square, or what might be the value of the lots.

To the 2d and 3d he says: That he cannot say, not having had any thing to do at that time with such property.

To the 4th he answers: That the city was steadily improving, and appearances indicated the growth of the city upwards.

To the 8th he says: That he knows nothing.

To the 9th: That he has never heard of any offer being made to Joshua Kennedy for the lands referred to, either from Kennedy himself, or from any one else.

To the 10th he says: That he knows nothing further.

T. L. TOULMIN.

Sworn to and subscribed this 28th March, 1845.

M. J. McRAE, *Commissioner*.

Deposition of H. Chamberlain.

The deposition of Henry Chamberlain on the interrogatories and cross interrogatories hereto annexed, a witness on the part of the complainants, in the case of Sidney E. Collins against Wm. R. Hallett, executor, &c.

To the 1st interrogatory he says: That he has resided in this city since the year 1827 constantly, and has been acquainted with the growth and progress of the city during that period.

To the 2d he says: He knows the land in dispute, and knew it at the times referred in 1820 and 1825; he thinks it was a marsh filled with water; in 1829 and 1830 it was somewhat improved, and Kennedy had a small house a little west of Water street, and a small wharf in front; the lot was generally overflowed about half the distance from Water to Royal street; it was in the suburbs; the business part of the city was between St. Michael and Government streets.

To the 3d he says: He does not know whether it was in much demand or not; should think the value was variously estimated; the front of the business part of the city below had been filled up to the east side of Commerce street, and it was considered practicable; a great many did engage in it who held property in the business part of the city, which they did with success.

To the 4th he says: That in the years referred to it was worth from 10 to 20 thousand dollars, to the best of his belief, although witness owned no property in the neighborhood, and does not think that he could form a very correct estimate as to its value.

To the 5th he says: That the improvements have extended up since 1829 and 1830 some four blocks or more above the property in dispute; he thinks that property in this part of the town began to attract public attention and to acquire a more definite and fixed value about the year 1831, and thereafter; the increase of the growth of cotton in the interior of the State more than any thing else.

To the 6th he says: There was an up town and a down town interest abou this time, but what effect it had he don't know.

To the 7th he says: He heard of the sale, and that it was for $40,000; knows nothing more on the subject of this interrogatory.

To the 8th he answers: That the property in question was worth in 1829 and 1830 a good deal more than the same quantity situated similarly above and adjoining, being nearer to the business part of the city, and it would be worth more at this time.

To the 9th he cannot say anything.

The 10th is already answered.

To the 11th he answers: That he cannot state, as he has not examined the tax list; thinks that unimproved property has been generally assessed above its value, but can't say as to the particular lot in controversy

To the 12th: He knows nothing further.

To the 1st, 2d, and 3d cross interrogatories: He cannot answer, not knowing the size of the squares, and cannot state what lots would have

been worth, but thinks they would have been worth double as much sold in lots as stated than as a whole; there would have been more persons able to buy.

To the 4th he answers: Yes, certainly.

To the 8th he says: He has no knowledge of the sales referred to.

To the 9th: Knows nothing; never heard Kennedy say.

To the 10th he says: That he knows nothing; that he never knew Samuel Kitchen to own the land, but thought that Joshua Kennedy and the heirs of Collins owned it.

(Signed,) HY. CHAMBERLAIN.

Sworn to and subscribed, the 11th April, 1845.

M. J. McRAE, *Com'r.*

Deposition of H. Munroe.

The deposition of Hugh Munroe, a witness on part of defendants, in the case of S. E. Collins vs. Hallett and others, on the interrogatories and cross interrogatories annexed.

To the 1st he answers: That he has lived in the city of Mobile for the last twenty-five years, and has been conversant with the property in the city of Mobile, and with the growth and progress of the same.

To the 2nd he says: He is acquainted with grounds referred to, but knows nothing of the divisions, &c.; knew it in the years referred to; in 1820 and 1825 the lands referred to were mostly covered with water; there was a small ridge running up the river west of where Water street now is, which was very little higher than the land back; in 1829 and 1830 he thinks it was partially filled up, but does not recollect as to the improvements on it; thinks there was none, except a wharf in front and a small wooden kitchen; it was subject to overflow where it had not been filled within 150 to 200 feet of Royal street; witness thinks the filling up was done by J. Kennedy and Kitchen; it was in the suburbs of the city; the wharf was used merely for staves and lumber; the business part of the city was from Government to St. Michael streets.

To the 3d he says: That he should not think that such property was in much demand; there were not many at that time able to buy such property, and would not consider that it had any definite value; the value at that time was mostly speculative, and it would have been considered very costly to fill up and reclaim the property.

To the 4th he says: That in 1829 and 1830 he thinks that the property referred to would not have brought more than from five to seven thousand dollars.

To the 5th he says: That improvements have extended up since '29 and '30 some four blocks or more; property in this part of the town began to acquire value in the year 1834 and thereafter; the Orange Grove was sold out in lots about this time, and much speculation was made, and at random in them; the growth was more than was contemplated in 1830 by the inhabitants of that time, particularly near to Water street; the expense of reclaiming was so great; the cause of the growth was the in-

crease of trade to the place, the increase of population, speculation and investment of capital in up town property.

To the 6th he says: He can't testify particularly as to this interrogatory.

To the 7th: He knows of the sales referred to; thinks there were two parties or companies bidding for it—Bloodgood for one, and Gordon for the other. It was sold for about forty thousand dollars. Witness thought it well sold, and thinks that was the general opinion.

To the 8th he answers: That he cannot form any correct or certain opinion as to this interrogatory.

To the 9th he says: That he would not have considered the property worth, at any time from 1820 to 1825, four thousand dollars. It was out of town.

To the 10th: This question has been answered before.

To the 11th he says: That during some portions of the time property was assessed a great deal above its value, excepting the years of speculation, from 1835 to 1837, when it would have brought the amount of its assessment. Generally it has been assessed above its value for the last fifteen years; thinks that waste and unimproved property was not assessed generally in as high a proportion as improved.

To the 12th: He knows nothing further.

To the 1st, 2d, and 3d cross interrogatories he answers: That he cannot state as to the value of the squares; the streets were not laid off, or rather the land was not filled up where the streets are; he thinks it would have brought more divided into lots than as a whole; there would have been more persons able to purchase, and it would have probably brought double what it would sold as a whole. When he *says* the streets were not laid off, he intended to say they were laid off but not filled up—that is, Water, Commerce, and Front streets. Kennedy filled between the squares, and left the streets for the corporation to fill up.

To the 4th he answers: Yes.

To the 8th he answers: That he cannot state particularly as to any of the sales referred to.

To the 9th: Knows nothing.

To the 10th: Knows nothing further.

(Signed) H. MUNROE.

Sworn to and subscribed, this 11th April, 1845.

M. J. McRAE, *Com'r.*

Witness states, in addition, that titles were not considered settled, and property did not bring as good prices as if titles had been perfect; and in putting on estimates this was taken into consideration by witness.

HUGH MUNROE.

Sworn to and subscribed, 11th April, 1845.

M. J. McRAE, *Com'r.*

Deposition of Josiah Wilkins.

The deposition of Josiah Wilkins, a witness in the case of Sidney E. Collins, complainant, vs. Hallett & Walker, executors of Joshua Kennedy, taken by the undersigned by virtue of the annexed commission issued to me from the circuit court of the United States.

Witness being duly sworn deposes and says:

To the 1st interrogatory: That he has resided in the city of Mobile twenty-five years this month, and has been acquainted with the property in said city, and has observed its growth and improvement during the most of that time.

To the 2d interrogatory: That he is acquainted with the property in dispute and referred to, and knew it in the years 1820, 1825, 1829, and 1830; in 1820 and 1825 it was a marsh and pond, grown up partly with marsh-grass, and was, much of it, covered with water, and impassable. In 1829 and 1830 the condition of it had greatly improved, having been partly filled up—Kennedy was forced to fill up by the corporation; at this time it was mostly covered with water in rainy weather; it was overflowed within one hundred and fifty to two hundred feet of Royal street. About or near where Water street now is, there was a kind of bank on the edge of the river; back of this was low, and in front, where Commerce street now is, was the river, filled with marsh-grass and bull-rushes. In 1829 and '30 it was all subject to overflow, except the margin near Royal street, as above stated, and the bluff on the bank of the river. It was in the suburbs of the city, and not in or near the business part of the city. In 1829 and '30 the business part of the city extended from Government street to St. Francis street; the property was two squares from the business part of the city.

To the 3d interrogatory: This kind of property was not at that time considered in the market, and had no fixed and definite value. In 1829 and 1830 it was only spoken of as property that would eventually be valuable; there were not many willing to undertake the filling up of said property at that time; and witness thinks that it would have been considered as much as it was worth to fill it up; and he thinks it could not have been filled up and improved upon to any advantage and profit, being out of the way of trade, and at that time would have been worth but little as a place of business if it had been filled up, owing to its location.

To the 4th: To the best of witness' knowledge and belief, he is of opinion that if it had have been offered for sale at that time it could not have been sold for exceeding four thousand dollars in cash, and that witness thinks that was its full cash value.

To the 5th: The improvements have extended up on Water and Commerce streets since 1835 and 1836 as far as Adams street. Property in the upper part of the city did not begin to acquire much fixed value until 1835 and 1836. The growth of the city in the upper part of the town since 1830, until within a few years past, has surpassed

general expectation. Within the last four years it has greatly declined, and is not estimated at near what it was in 1835, '36, and '37. The growth of the place, the increase in trade and population, has caused a general growth of the city, and much capital has been invested in the upper part of the city.

To the 6th: There was a struggle between the up town and down town people, by the one to depreciate down town, and the other up town property. What effect it had on the up town property about the years 1829 and 1830 witness cannot say, but subsequent to that time it advanced very rapidly in value.

To the 7th. Witness cannot state any thing in particular.

To the 8th. Thinks that the property in dispute is worth from twenty to twenty-five per cent. more than property of a similar kind north of it in the Orange Grove tract.

To the 9th. In the years 1820 and 1825 witness thinks the property was of no value; that he would not have taken it and been subject to the requisition of the corporation with regard to filling up, &c.

To the 10th. About the years 1832 and 1833 property in this part of town began to be considered valuable and came into demand.

To the 11th. He says that property has generally been taxed for the last fifteen years at from thirty-three to fifty per cent. above its value, and that unimproved property has been taxed at a higher rate than improved, say at one hundred per cent. above its value.

To the 12th. He knows nothing further, except as hereinafter may appear.

To the 14th. He was clerk of the corporation in the years 1827, 1828, 1829, and 1830. Was acquainted with Joseph Steele at the time referred to, and for many years previous. He thinks that Steele was tax collector about that time; that he is acquainted with his handwriting, and believes that the paper exhibited is genuine, and that it is in the handwriting of said Steele.

J. WILKINS.

(Copy.)

Mr. Samuel Kitchen,

1830.	To City taxes,	Dr.
For lots from Royal street to channel - -	$12,000	$48 00
Abatement - - - - - -	3,000	12 00
		36 00

Rec'd payment,

JOSEPH STEELE, *T. Collector.*

MOBILE, *July 16th*, 1830.

Sworn to and subscribed before me, this 26 May, 1845.

M. J. McRAE, *Com'r.*

To the 1st cross interrogatory he answers and says: That the square would have been worth about four thousand dollars. If divided the lots would sell probably for more at the time referred to; witness would

value them at an average of about two hundred dollars, and that the square would make about twenty lots of the size mentioned.

To the second he answers: That he would not at that time have considered the square referred to as of any value; it was under water, and would, as witness believes, cost as much as it was worth to fill it up. Witness supposes the square to be about 225 feet on St. Louis, and 240 on Water and Commerce, but can't say with certainty. He could attach no value to the lots divided as spoken of in this interrogatory further than as above.

To the 3d he answers and says: That the answer to the last interrogatory would apply to this.

To the 4th he says: That the city was steadily improving in 1829 and 1830, more capital was coming in and the trade increasing, and appearances indicated the growth of the city upwards.

To the 7th he answers: That he would think that the property, in 1829 and 1830, would have been assessed at from six to eight thousand dollars, which he would have considered a high assessment; in 1820 he would think that $500 would have been a fair assessment; witness thinks it probable that in 1820 it was hardly considered of sufficient value to be assessed at all. In 1819 and 1820 the corresponding squares north of St. Anthony street he would have considered worth about $\frac{1}{3}$ less than the other property, which was stated to be worth about two hundred dollars a lot in 1829 and 1830; and in 1819 and 1820 witness thinks that it was worth about $500, though no particular value was then attached to it.

To the 8th he says: That he does not recollect of any sales in the neighborhood of this property; about the time referred to Jones and Mitchell purchased the property on the opposite side of St. Louis street, but witness does not know any thing about the sales of Gordon to Jones and Mitchell, or to Wm. Jones, or to Leavens and St. John.

To the 9th. That some time subsequent to 1830, in conversation with Kennedy, he said that he should be able to get $10,000 for the property; he thinks that Kennedy was fearful of losing the property, and wished witness to put some houses and stables on it that he might not lose the possession by the intrusion of any one. He has never heard of any offer made to Kennedy for it.

To the 10th witness answers: That he does not know of any thing else material for the complainants in this case.

Signed, JOSIAH WILKINS.

Subscribed and sworn to before me, this 26 March, 1845.

M. J. McRAE, *Com'r*.

Deposition of T. G. Newbold.

The deposition of Thomas G. Newbold, a witness sworn to testify in this cause, wherein Sidney E. Collins is plaintiff, and the trustees and heirs of Joshua Kennedy are defendants:

To the 1st interrogatory witness answers: That he has resided in and

about Mobile ever since the year 1810, and he is acquainted with the property and improvements in the city of Mobile.

To the 2d interrogatory he says: That he knows the property in dispute; that he knew the property in 1820, 1825, and 1829, and 1830. In 1820 and 1825 it was mostly low and marshy, except a shell bank along the margin of the river, which was narrow; back of this, more a pond and marsh than any thing else. In 1829 and 1830 Joshua Kennedy commenced filling it up, but it was about in the same state as in 1825. It was covered back towards Royal street, more than half the distance from Water to Royal, except the shell bank on the margin of the river; very high tides would cover the shell bank, and there was a pass way for boats on each side of the shell bank into the pond covering that portion of the ground from the shell bank near to Royal street. The business part of the city was from Government street to St. Michael, and this property was in the suburbs of the city, and was low and swampy.

To the 3d he answers: That about 1829 and 1830 this property on the water began to be desirable, but it was not in much demand; it had scarcely any fixed and definite value; it was thought practicable to fill it up, but witness thinks that the filling up of the water property would cost as much as it was worth, or nearly so. The experiment had been tried below on the Holman property, but this was not so difficult to reclaim as the property in dispute, not being so much overflown. At the time referred to, witness thinks few were willing or able to undertake the filling up of such property; witness refers in his remarks about filling up to the river property, that back and below where Water street now is, and the high ground near Royal street was not so difficu't to fill up; from where Water street now is, to the present front of Commerce street, was in the edge of the river, and the water was on most of it from ten to fourteen feet deep.

To the 4th he answers: That to the best of his judgment he would not have considered the whole of the property from Royal to the channel of the river, and from St. Louis to St. Anthony, worth more than from five to seven thousand dollars in 1829 and 1830; that it was very low and would require great expense to fill it up.

To the 5th he answers: That improvements within the last four or five years have advanced greatly in the upper part of the city, but witness cannot say to what extent, not having paid any attention to it. He does not recollect at what time the property in the upper part of the city began to attract public attention and acquired a fixed value. But it was about the time of the sale of Orange Grove tract; which time he does not recollect. The growth of the up town since 1830 has surpassed general expectation, as witness thinks, greatly. The cause of the growth was the sale of the Orange Grove, many becoming interested in it, the general increase of the trade of the place, and the investment of capital up town to a great extent.

To the 6th: He does not have any recollection.

To the 7th: He only knows from report of the sale of Orange Grove by Innerarity to Bloodgood and others; was not present, and did not

know what it sold for; as to the competition of the bidders cannot say; don't know what the general opinion was as to price, or his own opinion.

To the 8th he answers: The relative value now and in 1829 and 1830 would be about the same; witness thinks that there would be but little difference in the value of the lands situated contiguous to each other.

To the 9th he answers: That at the time referred to no particular value was attached or affixed to lands situated as this land was; and witness cannot testify as to its value then.

To the 10th: This interrogatory was answered about the time of the sale of Orange Grove to Bloodgood and others.

To the 11th he answers: That the greater portion of the property in the city of Mobile, as a general rule for the last fifteen years, has been taxed above its cash value; so far as the knowledge of witness extends, he thinks that unimproved property has been taxed at a higher rate than improved in proportion to its value; he cannot say how much above the real value of property the assessment ranged.

To the 12th he answers: That he has set forth as fully as he can, except as may be hereafter stated.

THOS. G. NEWBOLD.

Sworn to and subscribed, this 22d March, 1845, before me,

M. J. McRAE, *Commissioner.*

To the 1st cross interrogatory witness says: That he at the time mentioned considered this square the only part of the land referred to as being of any value; the balance being covered with water would cost as much, or more than it was worth to fill it up, the water being 14 feet deep on some of it. He should consider it worth at that time from five to seven thousand dollars. Witness does not know the size of the square, and cannot say how many lots it would have made, or state what would have been the average value of such lots, except as in relation to the value of the square as stated above.

To the 2d. Witness does not know the size of the block referred to, but thinks that at that time it was not worth any more than the cost of filling it up and reclaiming it.

To the 3d he answers: The same as to the last, and including both together; singly the expense of filling this up would be much greater.

To the 4th. The city was improving gradually at this time, and as much if not more in the southern part than above.

To the 8th he says: That he knows that Jones and Mitchell bought on the corner of St. Louis and Royal a strip or lot running through to the river about that time, but what the size of the lot was, or what they paid witness don't know, but refers to the records of deeds in the record office for Mobile county for said information. Knows of the sale by Gordon to Jones and Mitchell about the same time; does not know the size of the lot, or the price for which it sold; thinks it was south of the lot referred to above, and adjoining; and refers to the records of Mobile county for particulars, where he presumes the deeds are recorded. He knows nothing of the sale to Leavens and St. John.

To the 9th he answers: That he has no recollection of ever having heard of any offer for the property.

To the 10th. He knows nothing further material for plaintiff or defendant in relation to the matters in controversy.

THOS. G. NEWBOLD.

Sworn to and subscribed before me, this 22d March, 1845.

M. J. McRAE *Commissioner.*

Deposition of P. McLoskey.

The deposition of Patrick McLoskey, a witness, sworn to testify on the part of the defendants on the interrogatories and cross interrogatories annexed, in the case of Sidney E. Collins vs. Hallett and Walker, executors of Joshua Kennedy, deceased.

To the 1st direct interrogatory he answers and says: That he has been a resident of the city of Mobile since 1819; has not been particularly conversant with the growth and progress of property in said city.

To the 2d he answers: That he knows that there is such property, but cannot state any thing particularly as to its situation at the times referred to. Does not recollect what was the condition of the property referred to at the period spoken of; cannot state particularly as to any thing, not having noticed the property or charged his mind about it in any way.

To the 3d he answers: That the property referred to was not at that time considered in so much demand as now; it was rather neglected. Does not think that this property had any definite or fixed value, and does not think that any property in Mobile has any definite or fixed value. As to the practicability or success of reclaiming such property, or the disposition of parties to engage in it, witness cannot testify, and knows nothing.

To the 4th he says: That he cannot state what was the value of this property in 1829 and 1830.

To the 5th he says: That the improvements have extended upwards since the time referred to about five blocks, as far as he can recollect. About the time of the sale of the Orange Grove, and afterwards, the upward growth of the city, since 1830, has surpassed greatly what he considered general expectation at that time. The causes of the growth have been the investment of much capital up town, and the increase of the business of the place, and the sale of the Orange Grove.

To the 6th he states: That one object of some of the purchasers of the Orange Grove in 1831 was to stop the growth of property up town, for the benefit of down town property. The purchase was made by witness and his brother, with others, and the property was bought by Bloodgood for the benefit of the company for $40,000, or about that sum. He cannot say what effect the combination had; he thinks that it had very little effect on the property at the time.

To the 7th he states: That he knows of the sale of the Orange Grove tract; that it was sold for $40,000, or thereabouts; that there was some competition among the bidders, but not much, as witness was in-

formed; he was not present. The seller of the property was not dissatisfied with the sale, as witness thought, and witness thought the purchase a good one for the purchasers, and it was generally thought so, so far as witness recollects.

To the 8th he says: That this property would be considered something more valuable than the contiguous property above, but how much witness cannot say. In 1829 and 1830 he would have considered the property in dispute more valuable than the contiguous property similarly situated, being more to the business part of the city.

To the 9th: He cannot state what would have been the cash value at that time. It is considered quite valuable now, but was not so much so at the time referred to; would not have considered it very valuable in 1820 and 1825.

To the 10th: This question has been answered before, about the time of the sales of the Orange Grove, and afterwards.

To the 11th he answers: That he cannot state as to the assessment of property previous to the last five years; since that time it has been assessed, witness thinks, above its value considerably, particularly for [the] last two or three years. Cannot state which has been assessed highest, improved or unimproved property.

To the 12th: He answers that he knows nothing.

To the 1st cross interrogatory he answers: That he cannot say..

To the 2d and 3d he answers: That he cannot say, and can form no idea at the time referred to.

To the 4th: The city was steadily increasing and improving in 1829 and 1830, but does not think there was at that time much advancement up town, more than that the improvements were general, and as much in favor of the *time* then upper part of the town, and if any difference it was in favor of down town.

To the 8th he answers: That he recollects to have heard of the sales referred to, but cannot state any of the particulars, or the prices, or the location of the property, except that it was in the neighborhood of the property in dispute.

To the 9th he answers: That he knows nothing.

To the 10th he answers: That he knows nothing further.

PATRICK McLOSKEY.

Subscribed and sworn to before me, this 31st March, 1841.

M. J. McRAE.

Deposition of M. D. Eslava.

SIDNEY E. COLLINS
vs.
HALLETT AND WALKER, executors.

M. D. Eslava, being duly sworn to testify on the interrogatories and cross interrogatories annexed, deposes and says, to

To the 1st interrogatory: That he is a native of the city of Mobile; that he left here in 1815, and returned in 1826, since which time he

has resided in said place. That he has been conversant with the growth and improvement of said city and the property in dispute during the whole of that time.

To the 2d he answers: That he is acquainted with said property, and that he knew said property in 1826, and in 1829 and 1830; was not here in 1820 and 1825; in 1829 and 1830 the ground was very low and marshy from near the river half way back from Water to Royal streets; on the immediate bank of the river it was dry, and a street or wagon way passed up as far as, or to the north of the wharf known as Kennedy's wharf. It was rather a marsh near the passway or road along the bank. It was overflowed at high tides a little further back than the middle of the block, between Royal and Water streets; the property not ordinarily overflowed was low, and would have required some filling up to be improved. It was out of the business part of the city, and rather in the suburbs, being that part of the city where the wood business was carried on. It was about three squares or more from the business part of the city. The business was principally done from Conti to St. Michael streets.

To the third he says: That this property and that of a similar kind was looked upon as desirable for business purposes, but was not then in much demand, and had no fixed and definite value, and was uncertain and variously estimated, but was considered valuable. That it was very costly to fill up and reclaim said property; and very few citizens at that time were able to reclaim such property, some filling up had been done on similar property, but not to a very large extent, but with success.

To the 4th he states: That in 1829 and 1830 the said property was worth about one hundred and twenty-five dollars per foot front on Royal street, running through to the river, in cash. Not knowing the front of the land on Royal street, cannot state the entire value, but only the value by the foot.

To the 5th he states: That the improvements have extended upwards since 1829 and '30 to State street and above. About the years of the first sales of the Orange Grove tract, which witness thinks was about 1833, the property began to assume a definite value. The property in that vicinity and upwards commenced improving about the years 1831 and 1832, and has surpassed the general expectation; the investment of capital up town, the increase of the trade of the city and products of the State, and consequent building upon the property, has caused its improvement and growth, and much capital has been invested and by many.

To the 6th he answers: That great efforts were made by the down town people to depreciate property up town, and similar efforts were made by the up town people to appreciate up town property. The efforts were made by McLoskey and Hagan, Hallett, Emanuel, and witness and others, down town citizens, and William Jones, A. W. Gordon, Kennedy, and others, up town people. Witness thinks that the efforts made did no injury to the up town property, but that those con-

tending for up town interest had rather the advantage, owing to the advantage of location.

To the 7th he says: That he knew of the sales of the Bayou Chattaugue tract, and the Orange Grove tract, and was present at the sale of the Orange Grove; that there were some five or six bidders, and not many at the sale; that the property brought more than was anticipated by its owners; knows nothing more of the Chattaugue tract; forty thousand dollars was bid for the Orange Grove tract, at which it was sold; there was considerable competition among the bidders; the general opinion was that it brought a high price; my opinion was that it brought a high price; witness bid about $25,000.

To the 8th he says: That it would be a great deal more valuable than an equal and contiguous portion of the Orange Grove, being nearer the business part of the city; would consider it at least doubly valuable; in 1829 and 1830 it would have been much more valuable, but not to the same extent as now.

To the 9th he answers: That he was not in the city, and cannot say.

To the 10th: In the years 1834, 1835, and 1836, the lands above St. Louis street began to be considered valuable and desirable.

To the 11th he answers generally: That the property of the city which is unimproved has, for the last fifteen years been assessed, at rather more than the cash value thereof; unimproved property has generally been assessed above its cash value, and in a higher proportion than improved property.

To the 12th he answers: That he knows nothing further.

Deposition of M. D. Eslava.

To the first cross interrogatory he answers: That the value of the square referred to, having a front of about five hundred feet on St. Louis street, and two hundred and forty odd on Royal and Water streets, and between St. Louis, St. Anthony, Royal, and Water streets, was at that time about nine thousand five hundred or ten thousand dollars, and could be divided into about twenty-two lots of the dimensions stated, and that those fronting on Royal street were worth about $400; those fronting on St. Louis and St. Anthony street about the same, and those fronting on Water about five hundred and fifty dollars each.

To the 2nd he answers: That the square between Water, Commerce, St. Louis, and St. Anthony, was worth about from eight to nine thousand dollars; that the square is about 243 feet on Royal street and Water street, and about 220 on St. Louis and St. Anthony streets; that said block would be worth, divided into twelve lots of 48 feet by 90 feet on Commerce and Water streets, an average of seven hundred and fifty dollars each, and one on St. Louis and one on St. Anthony streets, of 30 by 120 deep each, the sum of four (400) hundred dollars each.

To the 3d he answers: That the property between Commerce and the river was worth from ten to twelve thousand dollars.

To the 4th: That the growth of the town was increasing upwards, and appearances indicated that it would continue to do so.

To the 5th he says: That he rented the wharf in front of said property, and known as Kennedy's wharf, from the year 1830, for four years thereafter, for the sum of one thousand dollars per annum, as will appear from a copy of a lease hereto attached, drawn by John Elliott, and marked A, and drawn in November, 1830; since 1834 witness has heard that said wharf has rented for $1500 per annum, but does not himself know the fact.

To the 6th: Witness thinks that there are two wharfs which have been rented at the price, or about the price, above stated, to wit, $1500 each per annum.

To the 8th he states: That the property on the south side of St. Louis street, between Royal and the channel of the river, was owned by witness and others, and was sold by them, in 1830, at about $150 00 a front foot on Royal street, and running through to the river channel; witness knows of the sale of A. W. Gordon to Jones and Mitchell, but does not know at what price; he also knows of the sale by Gordon to Leavens and St. John, which embraced property from Water to the channel of the river, between St. Michael and the land above referred to, as sold by witness in 1830, which sale to Leavens and St. John, witness thinks, was for about eighty or one hundred thousand dollars; witness was in treaty for the same property in connection with Peter A. Rempson.

To the 9th: Witness knows nothing.

To the 10th he answers at the instance of complainant's counsel: That he is a son and heir of Don Miguel Eslava; that the property known as the parsonage house in this city was held by said Don Miguel in his lifetime, and at his death was sold by his heirs, under whom it is now held; that the authenticity of the titles has never been disputed; that the church at the time denied the power of the Government to sell; the papers hereto attached, and marked exhibit B, are translations of the originals, and are the titles on which the heirs of Miguel Eslava successfully defended their possession against the church in the supreme court of this State; they were laid before the commissioners for the examination of claims, and have been confirmed by the Government of the United States.

M. D. ESLAVA.

Sworn to and subscribed, this 20th March, 1845.

M. J. McRAE, *Com'r.*

Exhibit A.

This indenture, made the day of November, in the year of our Lord one thousand eight hundred and thirty, by and between Joshua Kennedy, of the city and county of Mobile, in the State of Alabama, of the first part, and Miguel D. Eslava, of the same place, of the second part, witnesseth: that the said party of the first part, for and in consideration of the rents, covenants, and agreements hereinafter in and by these presents mentioned, reserved, and contained, on the part and behalf of the said party of the second part, his executors, administrators and assigns, to be paid, observed, done and performed, hath granted, demised, leased,

let, and to farm let, and by these presents doth demise, lease, let, and to farm let, unto the said party of the second part, his executors, administrators, and assigns, all that certain tract, piece, or parcel of land and wharf erected thereon, situate, lying, and being in the said city, and known in the said city as Kennedy's wharf, in the upper part of said city, bounded on the south by lands and property of Samuel Kitchen, on the west by Commerce street, on the north by lands and premises of the said party of the first part, and on the east by the channel of the Mobile river, with the water privilege on both the north and south sides of the said wharf; together with all and singular the appurtenances whatsoever to the said wharf and premises belonging, or in anywise appertaining, and heretofore held, used, occupied, and enjoyed by the said party of the first part; to have and to hold the said land, wharf, and premises, and all and singular other the premises herein before granted and demised, or mentioned, or intended so to be, with the appurtenances, unto the said party of the second part, his executors, administrators and assigns, from the day of , in the year of our Lord one thousand eight hundred and thirty, for, and during, and until the full end and term of four years from thence next ensuing, and fully to be completed and ended; yielding and paying therefor yearly, and every year, during the said term, unto the said party of the first part, his heirs or assigns, the yearly rent of one thousand dollars, to be paid in semi-annual instalments of five hundred dollars each, on the first days of June and October, in each and every year during the said term, and moreover keeping up all the needful and necessary repairs of the said wharf during the whole of the said term hereby demised.

Provided always, and nevertheless, and it is the true intent and meaning of these presents, and of the said parties hereto, that if it shall happen that the said yearly rent of one thousand dollars hereby received, or any part thereof, be behind and unpaid by the space of ten days next over or after any of the said days whereon the same ought to be paid as aforesaid, that then and from thenceforth it shall and may be lawful to and for the said party of the first part, his heirs or assigns, into and upon the said demised premises, and every or any part or parcel thereof, with their appurtenances, in the name of the whole to re-enter, and the same to have again, possess or enjoy, as in his or their first or former estate or estates; and him, the said party of the second part, his executors, administrators, and assigns, and all and every other the occupier or occupiers of the said demised premises, from thence utterly to expel, remove, and put out, anything in these presents contained to the contrary thereof in anywise notwithstanding. And the said party of the second part, for himself, his executors, administrators, and assigns, doth hereby covenant, promise, and agree, to and with the said party of the first part, his heirs and assigns, in manner following, that is to say: that he, the said party of the second part, his heirs, executors, or administrators, shall not, nor will, during the said term hereby demised, assign, transfer, set over, or otherwise dispose of this indenture of lease, or the estate or right thereby granted or vested, to any person or persons whom-

soever, without first obtaining the consent in writing of the said party of the first part, his heirs or assigns, authorizing him so to do; that he will well and truly pay, or cause to be paid, to the said party of the first part, his heirs or assigns, the said yearly rents hereby reserved during the said term hereby demised, at the several times and periods above limited and appointed for the payment thereof as aforesaid, and according to the true intent and meaning of these presents; and that the said party of the second part, his executors, administrators, and assigns, shall and will, from time to time, and at all times hereafter, during the said term of four years, hereby demised and hereinbefore granted, at his and their own proper cost and charges, well and sufficiently keep in repair the said wharf and premises hereby demised, with their and every of their appurtenances belonging to the same, in, by, and with all manner of needful and necessary reparations and amendments whatsover, when and as often as the same shall be required, (damages by unavoidable accidents only excepted;) and the same premises, with all and singular their appurtenances, being in and by all things so well and sufficiently kept in repair, except as before excepted, at the end and expiration or other sooner determination of the said term hereby demised and granted, shall and will quietly and peaceably leave, surrender, and yield up, unto the said party of the first part, his heirs and assigns, in good and sufficient repair and condition, reasonable use and wearing thereof, and unavoidable accidents only excepted. And the said party of the first part, for himself, his heirs, executors, administrators, and assigns, doth hereby covenant, promise, and agree, to and with the said party of the second part, his heirs, executors, administrators, or assigns, that he, the said party of the second part, his heirs, executors, administrators, or assigns, truly and punctually paying all and singular the yearly rents hereby reserved during the said term hereby granted, at the several times and periods hereinbefore appointed for the payment thereof, and performing all and singular other the covenants hereinbefore mentioned and comprised, and which, on his part and their part, are to be done and performed, shall and may peaceably and quietly hold, use, occupy, and enjoy the said granted and demised premises, with their and every of their appurtenances, during the whole of the said term hereby granted, according to the true intent and meaning of these presents.

In witness whereof the said parties of the first and second part to these presents have hereunto set their hands and seals, at the city and county of Mobile, in the State aforesaid, on the day and year hereinbefore first mentioned and written.

[L. S.]
[L. S.]

Executed in duplicate, and signed, sealed, and delivered, in presence of—

Exhibit B.

SENOR INTENDANT OF THIS PROVINCE:

D. Thomas Price, interpreter of the English language in Mobile, respectfully sheweth:

Whereas more than two years have elapsed without having been paid to the above Thomas Price the emolument to him appointed, for want as it appears of funds, in consequence of which he has been under the necessity of selling his dwelling-house, so as to provide himself with the necessaries of life, and he is presently without asylum, being unable by the detention of his pay to satisfy to the rent of a house, and having the said Price been informed that the house which was formerly occupied by the parson of this town is to be sold for the sum that will be adjudged, or disposed of at public vendue, to the benefit of the royal revenue, he humbly petitions your honor to grant unto him the acquisition of the above property at the price which it will be awarded by appraisers, or at that which should be offered at the above vendue, by the highest bidder; in payment of which he humbly prays that should be accepted the credit of his emolument due unto him as far as the present day, and the balance he will pay it in specie. The petitioner flatters himself to obtain of the justice, generosity of your honor, the above prayed favor.

Mobile, February the tenth, of the year one thousand eight hundred and seventh.

Signed, THOMAS PRICE.

Senor DN. MORALES.

Petition.

SENOR D. INTENDANT GENERAL:

Dn. Juan Francisco Vaugeris, curate, rector of the church de la conception in Mobile, respectfully sheweth:

Whereas the parson's house, of the above church and parish, having gone to decay as to be uninhabitable, your honor, on that consideration, has been pleased to provide to and order that ten dollars should be paid to a private individual for any lodging, and as the only house that could be procured for my accommodation is that which I am actually occupying on the boundaries of this town, and to a considerable distance from the church and hospital, to the great spiritual injury where my ministerial duties incessantly call me. To provide to these inconveniences, as well as to have the uncomfortable dwelling I am inhabiting, I take the liberty to propose to your honor the purchase of the ruins and ground of the said parson's house, (casa presenterial,) whenever your honor should think it wise and advantageous to the royal treasury. I am therefore disposed that a committee of appraisers should be appointed as soon as convenient for its appraisement, as a friend of mine made me promise to rebuild the above said edifice. Wherefore I pray your honor to order the aforesaid valuation in the form and manner re-

quired by the laws, and that during my absence will please your honor to communicate your instructions or proceedings thereto to Dn. Casimir Prieto—a favor which I hope to obtain of the justice of your honor.

Pensacola, twenty-seventh of January, of the year one thousand eight hundred and seventh.

Signed, JUAN FRANCISCO VAUGERIS.

Decree.

Pensacola, twenty-seventh January, one thousand eight hundred and seventh.

The deputy commander shall make a report on the above.

MORALES.

Report.

SENOR INTENDANT:

In compliance with the foregoing decree of your honor, I beg leave to observe, that unless that the parson's house should be repaired in a manner as to render it inhabitable by its minister, it is my opinion that should be proceeded to the sale of it on the terms proposed by the petitioner, before that it be fallen on the ground. The king's revenue will derive by it some profits. I leave to your honor to determine on that matter as you think most wise and proper.

Mobile, ninth February, one thousand eight hundred and seventh.

FRANCISCO MAXIMILIAN DE SAN MAXENT.

Petition.

SENOR INTENDANT GENERAL:

Casimir Prieto, representative of Don Juan Francisco Vaugeris, curate, rector of the town of Mobile, respectfully sheweth:

That being the deputy commander of the above mentioned town, agreeably to the decree that your honor has been pleased to issue on the petition of my representative, for the purpose of adjudging unto him, for the price of the valuation that should be paid thereon, the actual ruins and ground of the king's property, which served of habitation to the above curate in the said town, and as in virtue of the said information a report is fully ascertained, the dilapidated state of the building, and consequently that it will be advantageous to the royal revenue that it should be sold, as he prayed for in his memorial presented to your honor, and which I herein annex, praying that your honor may be pleased to order to proceedings to the valuation of the above mentioned building and ground by the appraisers, that to such effect should be appointed by the royal revenue in the ordinary and regular forms, so that when complied with, the rules and requisites of the laws, I may be furnished with the legal title in favor of the above said curate, he being ready to satisfy to its right price—a favor which he hopes to obtain from the justice of your honor.

Pensacola, eighteenth of February, one thousand eight hundred and seven.

CASIMIRO PRIETO.

Petition.

SENOR INTENDANT DON GUILLERMO E. KENNEDY:

Inhabitant of this town in the faculty of D. in surgery, respectfully represents to your honor:

That in compliance with the commission of Senor Don Vicenti Folch, governor general of the province, directed to the ex-commander of this town, Don Jonquini de Osorno, I having made oath in the required forms of faithfulness and vassalage unto his Catholic majesty, was permitted to settle in it, and exercise therein my profession, with the enjoyment of all other advantages as the rest of this community.

It is from six months I have been inhabiting a house belonging to the royal estate, and destined to the accommodation of the curate rector, for which I have been paying the monthly rent of six dollars, and being just making some repairs to the said building, fence, and kitchen, which are utterly unfitted to any service and use. I have extra judicially learned that the above mentioned curate rector, for whom the above building was intended, and which has not been by him inhabited from these four years, fearful that it should fall on his head, has presented to your honor a petition praying that it should be adjudged unto him for the price of a valuation, a demand that I would have made long ago if I had not been sure that it should not have been listened to. Whereupon, in virtue of the right, I am equally assisted to the above very same demand. I pray therefore the support of your honor, and in default of my being admitted, please to order to be put the said parson's house at public auction, where I shall offer such a price as to fall to the highest bidder, to the greater benefit of the royal finances—a favor which I hope to obtain of the good will of your honor.

Mobile, tenth February, one thousand eight hundred and seven.

WILLIAM E. KENNEDY.

Decree.

Pensacola, eighteen February, one thousand eight hundred and seven.

The above petition, together with that on the same subject presented by Thomas Price, and the motion of the clergyman, Dn Juan Francisco Vaugeres, shall be filed and transmitted to Senor deputy commander of Mobile, and he shall cause to be published by posted bills, effected at three terms of nine days each, the above mentioned house, and to proceed to its valuation by way of two appraisers, each in the capacity of the individuals who were employed for its construction, whom the above Senor will appoint, together with two qualified citizens for appraising the ground after surveyed; all which shall be performed on oath, and in presence of two assistant witness, (testigos de asistencia;) and within the above specified terms will be received the different proposals that should be made on the said property both by the concerned therein and others, including Dn. Guillermo Kennedy, provided that he and all of them individually should be in the quality of vassals unto his Catholic majesty,

returning these presents, together with the notices and summons of the applicants, in order that either of them or their representatives be able to attend to the said sale which shall take place in this town; and in absence of the notary public the following assistant witnesses are appointed; Don Francisco Gutierrez de Arroyo y Dn. Ventura Quirogas, who being present accepted, and made oath to discharge honestly and faithfully the trust reposed in them.

MORALES,
DOCTOR HEREDIA,
FRANCO. GUTIEREZ DE ARROYO,
VENTURO QUIROGA.

Notice.

On the above day notice was given of the foregoing decree. Don Casemiro Prieto, as the representative of the clergyman Dn. Francisco Vaugeris.

ARROYO, QUIROGA.

Idem.

On the said day notice was transmitted, together with the within decree, to Senor commander of Mobile.

ARROYO, QUIROGA.

Decree.

In virtue of a decree duly received, and in obedience to what [is] disposed therein by the Senor Juan Ventura Morales, intendant per tempore of this province, with previous counsel of his *assessor*, I appoint for assistant witnesses Don Francisco Carredo and Rafael Suez, whom shall be informed of, and on acceptance they shall appear before me to be sworn. Thus I command and subscribe. Mobile, twenty-first February, one thousand eight hundred and seven.

FRANCISCO MAXIMILIAN DE SAN MAXENT.

Appearance, acceptance, and oath of the assistant witnesses.

In virtue of the above decree appeared on the said day, month, and year, before me, Don Francisco Canedo and Rafael Suez, whom, after having informed of the choice I made of them for serving as assistant witnesses in the present case, in the absence of a royal notary public in this town, they have hereby accepted and made oath to perform honestly and faithfully the services required of them. In faith of which they subscribe with me, and which I certify.

FRANCISCO CANEDO.
RAFAEL SUEZ.

Before me,

MAXIMILIAN DE SAN MAXENT.

Decree.

It is ordered for the first term that three bills be posted in the most public and customary places in this town, informing its inhabitants with the sale of the house mentioned in these documents, together with the

other details therein, and one be published in continuance. Mobile, twenty-first February, one thousand eight [hundred] and seven.

SAN MAXENT,
FRANCIS. CANEDO,
RAFAEL SUEZ.

Return.

The bill ordered by the above decree stands affixed in the most public and customary places in this town; they purport the literal copy of what is inserted in continuance.

We, the undersigned witnesses, certify the above said day, month, and year.

FRANCISCO CANEDO,
RAFAEL SUEZ.

Decree.

Having the first appointed *com.* for publication by affixing bills in the most conspicuous and customary places in this city expired on the twenty-first of last February, it is hereby ordered to be the same republished for the second time, one by inserted in continuance by decree relative to that proceeding. Mobile, second March, one thousand eight hundred seven.

SAN MAXENT,
FRANCISCO CANEDO,
RAFAEL SUEZ.

Return.

We, the undersigned assistant witnesses, certify that three notices have been posted up in the most public places in this town, purporting the literal copy of what is printed in continuance.

FRANCISCO CANEDO,
RAFAEL SUEZ.

Publication.—Notice to the public.

We, the undersigned, make known for a second time to the inhabitants of this town and its vicinity, within this jurisdiction, that in virtue of the decree of Senor Don Juan Ventura Morales, intendant pro tempore of this province, is ordered to be sold at public vendue the parson's house of this town, together with the ground and other small buildings, located on Royal street, and adjoining the parochial church. The inhabitants and its vicinity that should be desirous of making proposals will apply to this captainship, where they shall be recorded, and it is to be sold in Pensacola; applicants or their representatives may repair there to witness for themselves the act of the sale. Mobile, third March, one thousand eight hundred and seven.

FRANCISCO MAXIMILIANO DE SAN MAXENT,
FRANCISCO CANEDO,
RAFAEL SUEZ.

Decree.

Let [it] be known to Don José Collins, deputy surveyor, actually in this town, to call on the premises of the parson's house, and strictly sur-

vey that ground in the situation as stand the boundary points, stating the number of feet in front and depth which appertains to it, such as actually enjoys the tenant, D. Guillermo E. Kennedy, which is to answer in both ways to that of the parochial church, drawing a plan of the two edifices, showing the property of each, and by him duly certified, as to be adjoined it to the other relative documents. Mobile, third March, one thousand eight hundred and seven.

FRANCISCO MAXIMILIANO DE SAN MAXENT,
FRANCISCO CANEDO,
RAFAEL SUEZ.

On the above day we [the] undersigned attendant witnesses have communicated the foregoing decree to Don José Collins.

FRANCISCO CANEDO,
RAFAEL SUEZ.

[Here follows the plan.]

DON JOSE COLLINS,
Deputy surveyor, etc.

In virtue of the order of Don Francisco Maximiliano de San Maxent, commander of this town, dated third March, one thousand eight hundred and seven, do certify, to have surveyed and fixed the boundaries in presence of the said commander.

Firstly. The parson's house, which is of sixty-five French feet front on Royal street by hundred and fifty fronting Church street, with the depth according to the posts and lines represented in the above plan number two, and the church ground is eighty-five feet front on Royal street, with the depth according to the red lines on the plan number one; which lots are bound on the east by Royal street, on the south by Church st., on the west by vacant land, and on the north by the lands of Armand Duplantin and Nicholas Cook. The boundaries are regulated by the compass without correcting the variation. In faith of the above we subscribe both hereunto and on the plan. Mobile, seventh March, one thousand eight hundred and seven.

JOSE COLLINS, *Surveyor.*

Being the second appointed term for publication by posting bills on the most conspicuous and customary places in this city expired on the third instant, it is hereby ordered to be the same republished, and that one be inserted in continuance, as by decree relative to that proceeding. Mobile, twelfth of March, one thousand eight hundred and seven.

SAN MAXENT,
FRANCISCO CANEDO,
RAFAEL SUEZ.

We, the undersigned assistant witnesses, have posted up the three above mentioned bills in the most public places in this town, purporting the literal copy of what is printed in continuance.

FRANCISCO CANEDO,
RAFAEL SUEZ.

Notice to public.

We, the undersigned, make known, for the third and last publication, to the inhabitants of this town and its vicinity, within this jurisdiction, that, in obedience to the decree of Senor Don Juan Ventura Morales, intendant pro tempore of this province, and with the counsel of his *asesor*, is ordered to be sold, at public vendue, the parson's house of this town, together with the ground and other small buildings located on Royal street, and adjoining to parochial church. The inhabitants and its vicinity, that shall be desirous of making proposals, will apply to the captainship, where they will be recorded; and, as it is to be sold in Pensacola, applicants or their representatives may repair there to witness for themselves the sale. Mobile, twelfth March, one thousand eight hundred and seven.

FRANCISCO MAXIMILIANO DE SAN MAXENT,
FRANCISCO CANEDO,
RAFAEL SUEZ.

Town of Mobile, twenty-third March, one thousand eight hundred and seven.

I, the above said commander, before the assistant witnesses, who jointly certify with magistrate, that, in obedience to the decree of Senor Don Juan Ventura Morales, intendant pro tempore of this province, assisted by the counsel of his *asesor*, for the purpose of proceeding to the appraising of the house of the parson of this town, and that being expired the term of the last publication, I hereby do appoint, to serve as appraisers in their respective trade, the carpenters, Antonio Sicoles and Francisco Garral, and as blacksmiths Juan Murrell and Thomas Powell. The mason work will be valued by the only intelligent man in that department, Marcus Lopez. As regards to the ground and fruit trees that there be found, the services of D. Benjamin Dubroca and D. Rafael Hidalgo will be solicited, and unto all and each of them, individually, shall be made known the above appointments; which being by them respectively accepted, will appear this evening at four o'clock, to be duly sworn; and, if any of the above appointed individuals should not possess the Castilian idiom, I do hereby appoint Dn. Thomas Price to serve, in the capacity of his office, as an interpreter of the French and Spanish languages in this town, who shall likewise to that effect be summoned. Thus I command, and jointly, with the assistant witnesses in the said town, on the said day, month, and year.

FRANCISCO MAXIMILIANO,
FRANCISCO CANEDO,
RAFAEL SUEZ.

Return.

On the above same day we, the above assistant witnesses, have communicated the above decree to the individuals therein appointed, Antonio Nicolas, Francisco Guiral, Juan Murrell, Thomas Powell, Marcus

Lopez, Dn. Benjamin Dubroca, D. Hidalgo, and Don Thomas Price, which we certify.

FRANCISCO CANEDO,
RAFAEL SUEZ.

Acceptance and oath of the interpreter.

Immediately, personally appeared before me, and the above said assistant witness, Don Thomas Price, that, having been informed of his appointment to serve in the capacity of interpreter of the idioms in which the above appointed appraisers should express themselves agreeably to the foregoing decree, he, the said Price, present, accepts the above trust, and made oath, in the required forms of the law, to perform honestly and faithfully the services required of him in the above capacity. In faith of which, and for the full knowledge that he and the above appointed appraisers are to appear at this office this evening at four o'clock, he hereunto jointly subscribed with me and the above assistant witnesses. All which I certify.

FRANCISCO MAXIMILIANO DE SAN MAXENT,
THOMAS PRICE,
FRANCISCO CANEDO,
RAFAEL SUEZ.

In the aforesaid town, and on the above day, month, and year, at four o'clock in the evening, personally appeared before me, the interpreter, and the above assistant witnesses, Antonio Nicolas, Francisco Guiral, Juan Morrell, Thomas Powell, Marcus Lopez, Dn. Benjamin Dubroca, and Don Rafael Hidalgo; whom, after being informed, both by me and the above interpreter, of the object of their appointment to serve as appraisers in their respective trade and capacity, on the adjudgment that is going to be made of the parson's house in this town, *the* hereupon unanimously accepted and made solemn oath to discharge, honestly and faithfully, the trust reposed in them by the above commission, each in their respective trade, and to the best of their knowledge. In faith of which, they hereunto jointly subscribed, with those who could write, and others made a cross.

We, the commander, interpreter, and assistant witnesses, certify, that this mark of X cross is that made by Antonio Nicolas, Francisco Guiral, Juan Morrell, Thomas Powell, Marcus Lopez, Benjamin Dubroca, Rafael Hidalgo.

Before me,

FRANCISCO MAXIMILIANO DE SAN MAXENT.

THOMAS PRICE,
FRANCISCO CANEDO,
RAFAEL SUEZ.

Decree.

Notice shall be served to the appraisers and interpreter, who have been sworn to appear to-morrow morning at nine o'clock, at the above same place, in order to repair to the parson's house, and there to proceed to its valuation in the due forms. Mobile, twenty-third March, one thousand eight hundred and seven.

SAN MAXENT.

Immediately, we, the above assistant witnesses, have made known the foregoing decree to the said appointed appraisers and interpreters. In faith thereof we subscribe.

FRANCESCO CANEDO,
RAFAEL SUEZ.

Town of Mobile, twenty-fourth March, one thousand eight hundred and seven.

Personally appeared before me, and the said assistant witnesses, in compliance with the above decree, dated yesterday, and duly notified to them, Antonio Nicolas, Francesco Guiral, Juan Morrel, Thomas Powell, Marcos Lopez, Dn. Benjamin Dubrocà, and Dn. Rafael Hidalgo, together with the interpreter, Dn. Thomas Price, and being already nine o'clock of the morning, we repaired to the parson's house, and there we reiterated the instructions unto the above appraisers on what we were going to perform, and thus they proceeded to appraise:

Firstly. Dn. Rafael Hidalgo and Dn. Benjamin Dubroca, appointed to appraise the ground, after having the above severally examined the premises, and ascertained its front and depth, as shown in the within plan, they valued it in the sum of dollars - - - $130 00

The carpenters, Juan Morrell and Thomas Powell, appraised the work in that trade in the sum of - - - 400 00

The blacksmith appraised the work therein, according to their respective capacity, in the sum - - - - 17 04

Brought over - - - - - 547 00

To only mason there present appraised, in his similar ability, the mason work in the sum of - - - - 120 00

Total - - - - - - 667 04

Inasmuch as it appears by the above four sums, they constitute, in the whole, that of six hundred and sixty-seven dollars and four rials, in hard silver, amount of the valuation of the said parson's house, ground, together with its appurtenances; all *that* which is affirmed, ratified, and sworn to by the above appointed appraisers, in their respective trade and knowledge, and signed before me, the interpreter, and the said assistant witnesses; and those who could not write, they made a cross as above.

RAFAEL HIDALGO,
BENJAMIN DUBROCA,
JUAN MORRELL,
THOMAS POWELL,
Mark of ANTONIO ⋈ NICOLAS,
FRANCISCO GUIRAL,
MARCOS LOPEZ,
THOMAS PRICE.

Witnesses present: FRANCISCO CANEDO,
RAFAEL SUEZ.

Before me,
FRANCISCO MAXIMILIANO DE SAN MAXENT.

Proposal of Thomas Powell, 700.—*Diligencia.*

In the above town, and on the aforesaid day, month, and year, appeared before me, commander, and the assistant witness and interpreter, Thomas Powell, inhabitant of this town, and saith: That, *that* inasmuch unto what had been appraised the parson's house, ground, and appurtenances, he offers the sum of seven hundred dollars in ready money; and that he appoint, for his agent or representative in Pensacola, his brother Leafilo Powell, domestic into the house of Forbes & Co.; in virtue of which, he jointly subscribed with me and the above appointed interpreter and assistant witnesses.

THOMAS POWELL.

THOMAS PRICE,
FRANCESCO CANEDO,
RAFAEL SUEZ.

Before me,

FRAN. MAX. DE SAN MAXENT.

Proposal of Pedro Bensant, $725.—*Idem.*

At the same time appeared before me, Pedro Bensant, inhabitant of this town, and said, that he offered for the above house and its appurtenances the sum of seven hundred and twenty-five dollars; and to that effect he appointed Dn. Vincent Crespo, inhabitant of the neighborhood of Pensacola. In virtue thereof, he hereunto subscribed with me and the above assistant witnesses. All which I certify.

PEDRO BENSANT.

FRANCISCO CANEDO,
RAFAEL SUEZ.

Before me,

MAXIMILIAN DE SAN MAXENT.

Decree.

Having no other applicants or bidders on the above mentioned house appeared, extract shall be drawn of the whole proceeding on this case, and consigned to the archives of the captainship and sub-delegation, transmitting the original documents, together with the report thereon, to the senor intendant of the province, for the better and more suitable conclusion. Mobile, twenty-fourth March, one thousand eight hundred and seven.

SAN MAXENT.

Full testimony remains of the above proceeding, as commanded in the above decree, in a docket composed of eighteen pages of half sheet each without the covering. In faith of which we subscribe.

FRANCESCO CANEDO,
RAFAEL SUEZ.

Copied from the original document, which we transmit to the Senor Intendant of the province; and this is drawn to be consigned to this captainship. Mobile, first April, one thousand eight hundred and seven.

FRANCISCO MAXIMILIANO DE SAN MAXENT.
FRANCESCO CANEDO,
RAPHAEL SUEZ.

Deposition of Jos. W. Moore.

The deposition of Joseph W. Moore, in answer to the interrogatories, and cross interrogatories, propounded and hereto attached, in the case of Sidney E. Collins against Hallett and Walker et al.

To the 1st interrogatory he says: He came to Mobile in 1819, and remained there until 1832, when he left, and returned in 1839, where he has remained ever since; was conversant with the growth and progress of the city during the time he resided in it.

To the 2d he says: He knows the property referred to, and he knew it in 1820 and 1825, and 1829 and 1830; in 1820 and 1825 it was unimproved, and mostly covered with water; in 1829 and 1830, or about that time, Joshua Kennedy commenced filling up, to the best of witness' recollection; it was mostly marsh from the channel of the river, and covered with water at high tides back of where Water street is some distance; he would suppose that it was overflowed in common weather and tides, not more than six or eight inches; when he speaks of the river, he means where the marsh grass terminates, which would be about the east side of Commerce street; he would have considered this out of the business part of the city; the business part of the city was from Government street to St. Michael street.

To the 3d he says: That at that time he would not have considered this property very desirable or in demand, and it had no definite or fixed value; there was very little filling up done about this time, and not many disposed or willing or had the means of engaging in it.

To the 4th he says: That he cannot say; he would not have considered it of much value compared with its present value.

To the 5th he answers: The city has extended upwards since 1829 and 1830; the improvement up town commenced during witness's absence from the city; the cause of the growth is the increase of trade, order and population, and speculation, which was increased by bank capital.

To the 6th: He can't say anything.

To the 7th he says: He was not at the sale referred to, and can't state as to the competition; does not recollect what it brought, nor what was thought of the sale.

To the 8th he says: He does not know.

To the 9th: He cannot say, but by inconsiderable .

To the 10th: He has answered before during his absence.

To the 11th: He thinks, as a general rule for the last fifteen years, property has been assessed greatly above its cash value; thinks that un-

improved property has been assessed in a higher proportion than improved.

To the 13th: He knows nothing further.

To the 1st, 2d, and third cross interrogatories he answers: That he does not know the size of the squares referred to, or into how many lots of dimensions spoken of they could have been divided into; would not have considered them worth more on an average than $100 one hundred dollars each.

To the 4th he says: Yes.

To the 8th: He cannot state; does not recollect.

To the 9th and 10th: He cannot state anything.

J. W. MOORE.

Sworn to and subscribed this 11th April, 1845.

M. J. McRAE.

SIDNEY E. COLLINS, comp't,
vs.
WM. R. HALLETT et al., def't.

Deposition of J. J. Wanroy.

The deposition of J. J. Wanroy, a witness, sworn to testify on part of complainant on the interrogatories and cross interrogatory annexed in the suit aforesaid, deposes and says as follows, to wit:

Answer to No. 1. I have resided in Mobile from the year 1820 to 1830, and from 1833 to the present time.

No. 2. I am acquainted with the property in dispute on the deeds mentioned; it was a marsh covered with water to within 150 feet east of Royal street, it was about four squares distant from the business part of the city; the business part was, in 1820 to 1825, between Government and St. Francis streets, and 1829 and 1830, between Government and St. Michael streets.

No. 3. Up town property was in 1820 so desirable as it was in 1825; it commenced attracting attention in 1824, and a sale then made gave property in that part of town a certain value; previously the value was uncertain and variously estimated; filling in such property was expensive; it had been done down town in 1818 and 1819, and was gradually extending up the river.

No. 4. I think the cash value of this property, in 1829 and 1830, might have been about $25,000, judging from the sale of ninety feet on the south side of St. Louis street in 1824 for $10,000.

No. 5. The improvements north of this property since 1829 and '30 are about three squares; up town property attracted attention immediately after the sale made in 1824 on south side of St. Louis street, but more so after the sale of 1831 of the Orange Grove; and after the establishment of the Branch Bank prices advanced, many persons then became interested and invested borrowed capital.

No. 6. In 1824 an effort was made to arrest the growth of the city up town; several persons purchased from James Innerarity a strip of land having 90 feet front on Royal street, and running on the south side of St. Louis street to the channel of the river, for $10,000; these persons

were all owners of down town property, and their agreement was not to improve the property for a certain number of years, in order to enhance the value of property down town.

No. 7. I was absent from the city from 1830 to 1833, and know nothing of the sale of the Orange Grove property of my own knowledge.

No. 8. I should have given preference to the land now in question over an equal portion of the Orange Grove, because it was nearer to the business part of the city, and because there was less marsh between Royal street and the channel of the river.

No 9. In the year 1820, I should not think this property would have been bought at over $6,000 to $7,000; in 1825 it acquired a greater value from the sale made previously on the south side of St. Louis street, and it might then perhaps have brought $10,000 to $12,000; it has 250 feet about front on Royal street, and runs to the channel of the river.

No. 10. I think it became desirable soon after 1824, or as soon as the original owners would sell, but more so in 1829–'30.

No. 11. Previous to 1830, I think the assessments of property in the city were fair and moderate; after that time improved property was taxed about 20½ above its value, and unimproved property about 50 per cent. above its value.

No. 12. I know nothing material to the matter in dispute.

Answer to cross interrogatories.

Nos. 1, 2, and 3. I was not sufficiently acquainted with the value of property in 1829 and '30 to affix any particular price to each square of land by itself; as a whole, and judging more particularly by the sale made in 1824 of 90 feet on the south side of St. Louis street for $10,000, I think the property in dispute, having near 250 feet front, ought to have been worth, in 1829–'30, about $25,000; I do not think it could have been sold at all in lots of 50 by 100 feet, except from the east side of Water street to the channel of the river; the land between Royal street and Water street, in 1829 and '30, would not have been worth much; it is the water privilege that gives it value; very little property was sold in those days for cash.

No. 4. The city was progressing up stream in 1829–'30, but slowly.

No. 6. There are now two or three wharves, but I do not know the value of my own knowledge.

No. 8. I was absent from the city in 1830, '33, and am not acquainted with the particulars of any sales made in that neighborhood during that time.

No. 9. I have not heard Mr. Kennedy put any particular value on the land.

No. 10. I know nothing material for the plaintiff or defendant.

J. G. WANROY.

Sworn to and subscribed, this 20th March, 1845.

M. J. McRAE, *Com'r.*

Deposition of Charles Steele.

The deposition of Charles Steele, a witness on the part of the defendant, in the case of Sidney E. Collins vs. Hallett and Walker et al., on the interrogatories and cross interrogatories annexed.

To the 1st he says: Has lived in the city of Mobile about twenty-four years, and has been conversant with the property about the [city], and its growth, the entire time.

To the 2nd he says: He has been on the lands and knows it, and knew it at the period referred to, at least since 1825; in 1825 it was a marsh and covered with water near back to Royal street; in 1829 or 1830 there was a small wooden building on it between Royal and Water street, and a small wharf, a part running out from the building; in 1829 or 1830 it was partly filled up; can't say how far back the water extended at this time; the property was all low ground, except a bank near Royal street; in 1829 or 1830 it was in the suburbs and not near the business part of the city; the business part of the city was from St. Michael to Government street.

To the 3d he says: He cannot state as to the demand or character of the value; was not in the way of buying or asking about the property; can't testify as to the cost and practicability of filling up; knew nothing about such business.

To the 4th he says: He can't testify as to its value, and can't say whether it was valuable or not; never had any thought about it, nor was his attention ever directed to it.

To the 5th he says: He can't state particularly, but the up town has improved greatly since 1830.

To the 7th he says: That he don't know anything about the sale referred to, except from hearsay; had no opinion as to the price it brought or what that price was.

To the 6th and 8th: He knows nothing, except that he should consider the property in dispute more valuable than property above and contiguous, being nearer the heart of the city.

To the 9th and 10th: He can't say, except that he is of opinion that it is since 1830 that property in this part of the city began to be more valuable and desirable.

To the 11th he says: That for the last 15 years he is of the opinion that property has been assessed generally above its value; thinks that property previous to the last fifteen years was not assessed above its value; he cannot say whether waste and unimproved property has been assessed in a high proportion to improved or not.

To the 12th: He knows nothing further.

To the 1st, 2nd, and 3rd cross interrogatories: He has formed no opinion, and cannot say, never having thought of the matter, and not having any thing to do with such property at the time referred to.

To the 4th he answers: Yes; that the city was improving in 1829 and 1830 considerably, and the growth tended upwards.

To the 8th, 9th, and 10th he answers: That he knows nothing about

the matters of which he is interrogated, and knows nothing material to either party. CHARLES STEELE.

Sworn to and subscribed, this 12th April, 1845.

M. J. McREA.

Interrogatories.

Interrogatories to be submitted to Thomas Malone, Henry V. Chamberlain, Henry Lewis, Charles Bancroft, James G. Lyon, Jonathan Emanuel, Theopoulous L. Toulmin, Henry Chamberlain, esq., Hugh Monroe, Joshua Wilkins, Thomas C. Newbold, Charles J. Mansonmy, Patrick McLosky, J. L. Seabury, Miguel D. Eslavah, Jos. W. Moore, J. J. V. Wanroy, Charles Steele, witnesses on the part of the defendants, in a cause pending in the United States circuit court at Mobile, in which Sidney E. Collins is plaintiff, and Wm. R. Hallitt and Robert L. Walker, executors of the last will of Joshua Kennedy, J. H. Hastie and wife, and the other heirs of Joshua Kennedy, the Branch Bank at Mobile, James Campbell, and others, are the defendants.

1. How long have you lived in the city of Mobile, or the vicinity, or adjacent country, and how long have you been conversant with the property, growth, and progress of improvements in said city?

2. Are you acquainted with the ground in dispute in this cause, being the south half of the tract east of Royal street, and between St. Louis street and the Orange Grove; did you know this property in 1820, in 1825, and in 1829 and 1830; if so, please to state what was the condition of this property in 1820 and 1825; what was its condition or situation in the years 1829 and 1830; was it a marsh; how far back towards Royal street was it covered by water, or ordinarily subject to be overflowed; how far was it overflowed in high tides; what was the condition of the property not ordinarily overflowed; was it then in or near the business part of the city, or in the suburbs; if in the suburbs, how far from the business part of the city; over what region did the business part of the city then extend?

3. State if this property, and other property of a similar kind, was then deemed desirable, or otherwise; was it in demand; had it a fixed and definite value, or was its value uncertain and variously estimated; what was then thought of the cost, practicability, or profit of undertaking to reclaim such property from the marsh by filling it up; had the experiment been tried, and to what extent, and with what success; were many willing or able to engage in it?

4. State what in your best judgment was the value of this property in cash, in the years 1829 and 1830?

5. How far north above this ground have the improvements of the city extended since the years 1829 and 1830; when did property in the upper part of the city of Mobile begin to attract the public notice, and to acquire any definite value; was the upward growth of the city of Mobile since 1830 such as was anticipated by the inhabitants then, or has it sur-

passed general expectation; if so, how far; what have been the causes of that growth; have many persons become interested, or has much capital been invested there since 1830?

6. Were there about 1830 any efforts, and single or combined, to depreciate up town property, or arrest the upward growth of the city; what were they and by whom; did these efforts and proceedings, if any such were made, injure the value of up town property, present or prospective, or render it less desirable?

7. Do you know of the sale of the Orange Grove tract and the Bayou Chatauge tract, made by James Innerarity in 1831 to Bloodgood and others; was there much competition amongst the bidders at said sale, and how much was the bid for the whole; what was the general opinion then expressed as to the price the tracts then sold for; what was your own opinion?

8. How would the land, the subject of this suit, now compare in point of value with an equal extent of lands of the Orange Grove tract, having a water front, and lying contiguous to Baudain tract; and how in 1829 and 1830?

9. What was the cash value of the land, the subject of this suit, and before described, in the year 1820 and in the year 1825?

10. At what time did property in the upper part of the city of Mobile, above St. Louis street, come into notice or demand, or begin to be considered relatively valuable or desirable?

11. Say how, as a general rule for the last fifteen years, would the cash value of lands in the city of Mobile compare with the assessment thereof for the collection of city taxes; has property in former times been assessed above its cash value; has or has not waste or unimproved property generally been assessed greatly above its cash value, and in a higher proportion than improved property?

12. If you know any thing material to the matter in dispute between these parties, or to the questions in contest, or to the matters of evidence about which you have been interrogated, set forth the same fully and at large in your answer.

Additional interrogatory to be submitted to Henry V. Chamberlain.

13. Were you assessor of taxes for the city of Mobile in the years 1829 and 1830? Please to state from the then condition of the property, the subject of this suit, in those years, what depth of filling up was required to bring the property into its present state; what average depth from Royal to Water street; what average depth from Water street to where the wharves now commence? State the same in feet or yards. Did Joshua Kennedy, after 1830, as the owner of this property, make at his own cost the whole of Commerce street running across it?

Additional interrogatory to be submitted to Josiah Wilkins.

14. Were you clerk of the corporation of the city of Mobile in the year 1830; were you acquainted with Joseph Steele, tax collector of

the city for that year; are you acquainted with his handwriting, and do you recognise as genuine the paper exhibited to you purporting to be signed by said Steele, and being a receipt for city taxes, dated 16th July, 1830, and stating an abatement of $3,000 on the assessment of this property? If so, attach the same to your answer.

STEWART & EASTON,
For Defendants.

Interrogatories.

Interrogatories to be submitted to Thomas Malone, Henry V. Chamberlain, Henry Lewis, Charles Bancroft, James G. Lyon, Jonathan Emanuel, Theopolous L. Toulmin, Henry Chamberlain, Hugh Munroe, Josiah Wilkins, Charles J. Monsony, Patrick McLoskey, James L. Seabury, Miguel D. Eslava, Joseph W. Moore, J. J. V. Wanroy, Charles Steel, witnesses for the defendants, in a cause pending in the circuit court of the United States, in which Sidney E. Collins is plaintiff, and William R. Hallett and Robert L. Walker, executors of Joshua Kennedy, deceased, and others, are defendants.

1. What was the value of that square of land, bounded north by St. Anthony street, west by Royal street, east by Water street, and south by St. Louis street, in 1829 and 1830; what is the size of the square, and into how many lots of 50 feet by 100 could it have been divided; and what would have probably been their average price at that time, if sold in the ordinary way of selling such lots; what was the value at the same time of the land between Water street, Commerce street, St. Louis street, and St. Anthony street; what is the size of the block thus bounded; and what would have been the average price of lots 50 feet by 100 on the usual terms of selling such property?

3. What would have been the value of the lands between Commerce street and the channel of the river, at the same time?

4. Was the city steadily increasing and improving in 1829 and '30; and did not the appearances indicate the growth of the town on the river and upward.

5. To M. D. Eslava. Did you, at any time, rent the wharf or wharves opposite to these squares, or to the squares above, from Joshua Kennedy; what rent did you pay; what rents have this property brought within your knowledge since 1830?

6. To Jonathan Emanuel, M. D. Eslava, J. J. Wanroy, James G. Lyon. State what have been the value of the wharves opposite to this property since 1829 and '30; how many of them are there, and what have they usually brought, or what have they been worth per annum?

7. To Chamberlain and Wilkins alone. What was the value of the property embraced in this description according to the assessments made in 1829 and 1830; what in 1819 and '20; what was the value of the corresponding squares to the north of St. Anthony street?

8. To all. Do you know of any sales of property in the neighborhood of this property about the year 1830; do you know of the prices given for lots on the south side of St. Louis street, and bounding on it?

State the prices that property brought in that place at that time, and a description of the lot sold. Do you know of the sale of A. W. Gordon, Jones and Mitchell, or William Jones; when was that sale, and for what; do you know of the sale of A. W. Gordon to J. B. Leaven or St. John; when was that sale made; at what price; and what was the size of the lot?

9. Do you know, or have you heard, Joshua Kennedy value the land before mentioned; do you know, or have you heard from him, that he was offered $450,000 for it, or for the lands above, or have you ever heard of any other offer?

10. If you know any thing material for the plaintiff, or to the matters in controversy, answer the same fully and at large.

CAMPBELL & CHANDLER,
For Plaintiff.

Deposition of W. H. Platt.

The deposition of William H. Pratt, a witness on the part of the defendants, in the case of Sidney E. Collins vs. Hallett and Walker et al., pending in the United States circuit court, on the interrogatories and cross interrogatories annexed.

To the 2d interrogatory he answers: That he had several communications with Mrs. Lanier, in which the age of her son Sidney was spoken of. She stated to witness that Sidney was born 22d September, 1809; she made the same statement to witness several times; witness is of opinion as often as half dozen times or thereabouts. Those conversations occurred at the house of Dr. Clayton, and whilst witness and Mrs. Lanier were on the road to plaintiff's residence, which is not far from the town of Liberty, in Texas. The subject was also alluded to at the house of Dr. Dismuths, in same county; in one of the conversations she said that at first he was called "Sidney," but that Mr. Collins, upon looking into the almanac, afterwards found that the days and nights at the time of his birth were of equal length, and then called him "Sidney Equal" from that circumstance; witness then told her that he thought her son's middle name was Eugene; she said no, his name was Equal from the circumstance beforementioned.

To the 1st interrogatory witness answers: That he is acquainted with Mrs. Elizabeth Lanier, who was represented to him by herself and the plaintiff, Sidney E. Collins, to be the mother of said Sidney. In the month of February last, she was living in the family of Dr. Clayton, near the town of Liberty, Liberty county, Texas.

To the 3d and 4th interrogatories he answers: That in one of the conversations before alluded to, at the house of Dr. Clayton, the claim of Sidney E. Collins, which is the subject of this suit, was spoken of. In regard to Mrs. Lanier's interest therein, or expectation of advantage therefrom, she stated to witness, that if Sidney succeeded in establishing the claim, she would get a part. Witness thinking she alluded to the dower, and having heard that she and Mr. Collins were never married, inquired how that could be, she knew she had never been mar-

ried to Mr. Collins; she answered, yes, she knew it, but a mother could inherit from her child, and she would get George's part; she spoke once or twice in the same conversation of her connexion with Collins, and stated that they lived together under articles as a good many others did in those times.

To the 5th interrogatory he answers: That nothing more occurs to him.

To the 1st cross interrogatory he answers: That he was not employed to call on Mrs. Lanier, nor did he know, nor had he been informed, that such a person was living before reaching Texas, or perhaps the county in which she resides. Witness, on going to Texas, was requested by J. G. Aiken to find out all he could respecting the persons concerned in bringing or carrying on this suit; also any fact connected with the questions involved. While in Liberty county, Texas, witness heard that a Mr. Primrose had purchased Collins's claim for a watch, a shot gun, and fifty dollars in cash; that he had informed Collins that his claim was of no value, but that he wished to get it to annoy the Kennedys; also, that Primrose had tried to buy out Mrs. Lanier but that she would not sell; this induced witness to visit Mrs. Lanier to learn the truth of the report, and also to learn whether he had been truly informed in other respects as to the questions involved in this matter. Witness derived his information, respecting this suit, chiefly by reading a copy of the bill in the possession of Mr. Ford, who was representing the Bank attorney in the defence, and occupied the same office with witness. He also had conversations with Mr. Ford, J. G. Aiken, and Wm. R. Hallett, and read one or more of the answers.

To the 2d cross interrogatory he answers: That witness did not represent himself as an attorney in the employ of the defendants, but has no doubt that she believed him such.

To the 3d interrogatory he answers: That he does not know what is meant by Mrs. Lanier's son's return to the house. Witness never at any time saw plaintiff at the house when the first conversation with Mrs. Lanier occurred. In witness's first interview with Mrs. Lanier he represented himself as an attorney from Mobile, and expressed to her a wish that she would give him any information, in her possession, necessary [to] the conspiracy alluded to in answer to the 1st cross interrogatory.

To the 4th he answers: That he has already stated the whole of the conversation relative to the subject, and he believes in the words of both parties; the conversation was introduced by witness asking Mrs. Lanier as to the truth of the report alluded to in his answer to 1st cross interrogatory. She stated that a Mr. Primrose and Mr. Thompson had been to see Sidney, and had also called on her; that she understood that Sidney had given to one or the other of them some paper, she did not know what. She had advised Sidney not to give it. Witness told her that he had understood that they had tried to buy her out, and inquired as to her interest. She said that if Sidney succeeded in estab-

lishing the claim she would get a part; then followed the conversation before stated.

To the 5th cross interrogatory witness answers: That on arriving at Doctor Clayton's the family were present, but left witness and Mrs. Lanier alone before witness spoke to her of her interest, of Sidney's age, of her marriage—and no one was present at these conversations between them. Witness never saw Sidney E. Collins there; the age of Sidney was spoken of in the presence of a Mr. Booth in the room, and there was an allusion made to his age at Dr. Dismuths, when Mrs. Lewis, the plaintiff's mother-in-law, Mrs. Dismuths, and Mrs. Griffin, his sister-in-law, and a man whose name witness did not learn, as well as several noisy children in the house and shed, were present.

To the 7th cross interrogatory he answers: That in his first conversation with plaintiff he spoke to him of the report before mentioned in his answer to 1st cross interrogatory; that among his papers, respecting witness's business to Texas, he found a memorandum or letter respecting said claim. Witness knows of no letter from John G. Aiken to Sidney E. Collins. What witne s alluded to was a postscript of a letter of instructions from Mr. Aikin to witness respecting certain land claims in Texas, in which this suit was mentioned. Witness read it, or a principal part of it, to plaintiff. Witness has searched for that letter and cannot find it; the last time he saw it it was in witness's possession; witness cannot pretend to give the exact language of that letter; the contents were, witness thinks, about these: it spoke of the suit brought in Collins's name, or against the heirs of Kennedy, as the writer believed, for the benefit of others; that Mr. Collins had never made any demand on the executors of Kennedy; that the reports were that Collins was dead, and if living his residence was unknown, but he had lived in Texas; that it was thought by some of his old acquaintances that he knew nothing of the suit; that if Mr. Collins would for a reasonable compensation do the Kennedys and himself more justice, that witness might with the peace offering; that letter was written in Mobile and given to witness by Mr. Aikin.

To the 8th cross interrogatory witness answers: That he never made the plaintiff any direct offer for a compromise, nor any offer for the purchase of his claim, further than this, that the defendant, to get rid of the annoyance of a suit, would give to plaintiff whatever it would cost them to prepare their defence should the suit go on; witness expressly told plaintiff, and that too frequently, that he was authorized to go no further, and that whatever was offered or received would be as a peace offering; witness told plaintiff that he could get, or had been offered, five thousand dollars for his claim; whereupon witness told plaintiff there was no use of talking further on the subject; that if he talked that way nothing could be done; witness was authorized to make the overture he did by William R. Hallitt and J. G. Aikin, the latter of whom instructed him to make no arrangement, unless upon the terms of withdrawal or retraction of what was said in the bill injurious to the memory of Joshua Kennedy.

To the 9th cross interrogatory witness answers: That he himself is satisfied that Sidney E. Collins is living, and has heard Mr. Aikin express no doubt of it since plaintiff arrived here about the 1st March, though he heard him express his conviction to the contrary previously; witness believed that plaintiff was dead until the latter end of January; witness heard Mrs. Lanier and plaintiff say that George and Joseph were dead.

To the 10th cross interrogatory witness answers: That in his first interview with plaintiff he spoke to him of the report mentioned in his first cross interrogatory; the conversations were general and without method; witness cannot say they were full; the conversations were such from the apparent purpose of the plaintiff to say or explain anything that witness could draw no satisfactory conclusions from them; the overtures were somewhat mingled up in these conversations; and after them witness told plaintiff that if he would go to Mobile and communicate with the defendants, he would have a different opinion of his case; that his friends had bid him out, and made him a citizen of Missouri, to prevent the defendants from communicating with him; plaintiff told witness that he could not conveniently go there for want of funds; witness told him there would be no use of going to see the defendants after they were put to the expense of preparing the case, and if he was going he had better go then, and offered to pay his expenses there; this offer was accepted, and witness did pay his expenses from Texas to Mobile, which plaintiff has promised to repay; witness states there was a conversation between the plaintiff and John G. Aikin, one of the defendants, on the subject of this suit, within perhaps the first hour after plaintiff's arrival in Mobile; on reaching Mobile plaintiff accompanied witness to his office, which is in the law buildings on Royal street, and next door (up the same flight of stairs) to the office of Mr. Aikin; witness took plaintiff into Mr. Aikin's and introduced him to Mr. A.; Mr. A. seemed very much astonished to see him; told Mr. Collins he had heard a good deal of him, and that his last information was [that he was] dead; was glad to find it was not so; there were more general remarks on both sides; Mr. A. observed to him that a suit had been commenced in his name, in which he professed not to know his own age; that he thought he could then inform him where he was born; Mr. C. then left the office of Mr. A. in company with witness; witness knows of no other conversation between plaintiff and any of the defendants respecting this suit, nor of any offers of a compromise made by any of them to him at any time; there has been some talk Mr. Aikin said that he did not wish to wear his life away in defending suits or titles; he wished ease and quiet for the remainder of his days; Mr. Collins always talked so general, and required such terms, that no direct overtures were ever made, except the one mentioned in answer to 8th cross interrogatory; he has been asked if he would do so and so, but no proposition as such as the witness can remember has been made or renewed to him in Mobile. WM. H. PLATT.

Sworn to and subscribed, this 19th April, 1845.

M. J. McREA, *Com'r.*

Interrogatories to W. H. Platt.

Interrogatories to be exhibited to Wm. H. Platt, esq., a witness for the defendants, in a certain suit pending in the circuit court of the U. States for the southern district of Alabama, in which Sidney E. Collins is plff., and Wm. R. Hallett and Robt. L. Walker, executors of Joshua Kennedy, and the heirs of Joshua Kennedy, the Branch Bank at Mobile, James Campbell, and others, are defendants:

1. Are you acquainted with Mrs. Elizabeth Lanier, the mother of the plff., Sidney E. Collins; where does she now reside?

2. Did you at any time, or at sundry times, hold any conversation or conversations with the said Elizabeth Lanier respecting the age of the plff., Sidney E. Collins; if yea, what did she state to you as to the time when said Sidney E. Collins was born; did she make the same statement to you more than once, and how often; what circumstance did she refer to as fixing the month and the day of the month when Sidney E. Collins was born?

3. What did the said Elizabeth Lanier state to you respecting her interest in the suit of Sidney E. Collins vs. the executors and heirs of Joshua Kennedy and others, or of the advantage she expected to herself by the success of the plaintiff in said suit?

4. Did the said Elizabeth Lanier, in any conversation with you or at which you were present, state or admit that she never was married to Joseph Collins, the reputed father of the plaintiff?

5. If you know anything material to the matters in dispute between the parties, or the subject of this suit, or to the matters of evidence about which you have been interrogated, set forth the same fully and at large in your answer.

STEWART & EASTON,
For defendants.

Cross interrogatories to be exhibited to Wm. H. Platt, a witness for the defendants in a cause pending in the circuit court of the U. S., in which Sidney E. Collins is plaintiff, and Wm. R. Hallett and Robert L. Walker, executors of the last will and testament of Joshua Kennedy, deceased, and others, are defendants.

1. Were you employed to call upon Mrs. Lanier, the individual named in the direct interrogatories, with the view of holding the conversations which you are now called to report; or, if this is not the case, will you state how it is you happened to have such conversations. By whom were you furnished with any information on the subject of this suit, and for what purpose did you inquire of Mrs. Lanier on the subject?

2. Did you acquaint Mrs. Lanier in your first conversation that you were an attorney in the employ of the defendants, or either of them, and that the information she gave would be reported to them, and that you were making inquiries on behalf of the defendants?

3. Be pleased to state what account you gave of yourself in your first interview, or in any interview, with her before her son's return to the

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house. Did you before her son's arrival inform her that you were an attorney in quest of evidence to be used in this suit, and that your inquiries to her had that object in view?

4. Will you be pleased to state what each of you said in these conversations? Repeat as precisely as you can all that passed between you, in as near as you can the precise language of the conversation, as well on your part as on hers.

5. Who was present at these interviews between you; was there any person in the house at the time besides the old lady and yourself; state who were there when you first arrived, and before you saw Sidney E. Collins.

7. Will you state your first conversations with Sidney E. Collins on the subject of this suit; what account did you in the first instance give of your mission; please attach to your answers John G. Aikin's letter to Mr. Collins, the plaintiff. If you have no such letter, state where it is, when you saw it last, and in whose possession it now is. State as nearly as you can the precise language of that letter. When was it written, and who gave it to you?

8. Will you state the offers you made to Collins, the plaintiff, for a compromise or purchase of his rights? Mention the different offers you made to him, and how you proposed payment. What was the first price offered by you; what was the last; was this the cause of your agency; who were your employers?

9. Did you satisfy yourself, and have you been able to satisfy Mr. Aikin, that the plaintiff is in life, and that George Collins and Joseph are dead; what is your information on the subject, and from whom derived?

10. Did you have full conversations with the plaintiff in this suit upon his connection with it, and his interest in it; will you state if your offers at settlement were made after these conversations; did you invite him to visit Mobile for the purpose of a further negotiation, and agree to pay his expenses; will you state if conversations on the subject of the suit, and with a view to its settlement, were not had with *her* by some of the defendants within the first hour of his arrival; have not those propositions been renewed?

CAMPBELL & CHANDLER, *for Plff.*

The commission to take testimony for U. S. Court.

CIRCUIT COURT OF THE UNITED STATES,
Southern district of Alabama:

To Edward B. Gale and Sidney T. Douglass, esquires:

Whereas, we repose in you full confidence, we have appointed you, and do give you, and each of you, full power and authority to examine all such witnesses as the defendants or either of them, in a certain cause pending in the circuit court of the United States for the southern district of Alabama, in which Sidney E. Collins is plaintiff, and Wm. R. Hallett and Robert L. Walker, executors of the last will and testament of

Joshua Kennedy, deceased, J. H. Hastie and his wife, J. G. Aiken and his wife, A. R. Meslier and his wife, Joshua Kennedy and Augusta Kennedy, Samuel Kitchen, William Kitchen, James Innerarity, Jas. Campbell, and the Branch of the Bank of the State of Alabama, at Mobile, are defendants, may produce before you on interrogatories and cross interrogatories; and we do give you, and each and either of you, full power and authority to call said witnesses before you or either of you, and to examine them on their respective corporal oaths, at such time and place as you may appoint; and do hereby require you to reduce their answers to writing, and to cause the aforesaid witnesses to subscribe the same, and to enclose the same under your hands and seals, or either of you, unto the court aforesaid. Hereof fail not, and have you before the said court this commission with your return.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, the 4th Monday of December, 1844, and of the American independence the sixty-ninth year.

JOHN FITTS, *Clerk*,
C. C. S. Dis. Alabama.

Issued February 26th, 1845.

JOHN FITTS, *Clerk*,
C. C. S. Dis. Alabama.

This commission is approved.

WM. CRAWFORD, *Judge.*

Direct interrogatories to witness and to Mrs. M. Lewis.

Interrogatories to be propounded to Mrs. Margaret Lewis, a witness for the defendants in a certain suit pending in the U. S. circuit court at Mobile, wherein Sidney E. Collins is plaintiff, and Wm. R. Hallett and Robert L. Walker, executors of Joshua Kennedy, deceased, the heirs of Joshua Kennedy, and others, are defendants.

1. Were you acquainted with Joseph E. Collins, a deputy surveyor general under the Spanish government, and with Elizabeth Wilson; when were you acquainted with them?

2. Were you at Collins' house at Pascagoula during his last illness; were you present when said Jos. E. Collins died, and were you at his funeral; in what year did he die, and what time of the year; state how you are enabled to remember the year precisely; when were you married; have you the certificate of your marriage now in your possession; if so, please exhibit it to the commissioner, and permit him to annex a copy, the date thereof, to your deposition; was there any marriage contract or agreement drawn up and executed between you and E. Lewis, your late husband; if so, is that writing now in your possession, and when was it made; what is the date of said marriage agreement; please to exhibit the date of the same to the commissioner, and permit him to certify the same, and say whether said agreement was made at the time it bears date; how long after making said agreement with your late husband were you married; how long after your said marriage was it that

Joseph E. Collins died; is there any circumstance that enables you to remember the season of the year he died; if so, please to state it.

3d. Were you acquainted with the two sons of Elizabeth Wilson, called and known by the names of George Collins and Sidney E. Collins; do you know when they were born?

4th. Do you remember seeing the boy Sidney during the last illness of Joseph E. Collins, and at the time of his death; if so, please to state, from your recollection of his size and appearance, what you supposed his age to have been to the best of your knowledge and belief.

5. Can you state any circumstance during the last illness of Joseph E. Collins, or at the time of his death, tending to show the then age of Sidney; was he of a size to do any thing, and if so, what was it?

6th. Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

STEWART & EASTON, *for defendants.*

Endorsed. Filed 15th February, 1845.

JNO. FITTS, *Clerk.*

Cross interrogatories to Mrs. Lewis.

Cross interrogatories to be exhibited to Mrs. Margaret Lewis, a witness for the defendants in a cause pending in the circuit court of the U. S., in which Sidney E. Collins is plaintiff, and Hallett and Walker, executors, and others, are defendants.

1st. What name did Elizabeth Wilson have after her connection with Joseph Collins; was she addressed as Mrs. Collins; did her children bear the name of Collins; did Mr. Collins address her as Mrs. Collins; did she preside over his house and fulfil the usual duties of a mistress of a family?

2d. Do you remember the number of children born of Mrs. Collins after her marriage; do you know whether she lost two or three by premature births; state the number of children, the period of their births, and when any of them died?

3d. Where did Joseph Collins die; where was his house; was it in the Spanish portion of the State of Mississippi, (as that State now exists, and in Jackson county of that State?)

4th. Do you know any of the circumstances connected with the transfer of the right of Sidney and George Collins to Joshua Kennedy, to their lands in the city of Mobile; do you know whether Joshua Kennedy applied to them, or to either of them; did he apply to your husband to perfect a sale for him, or to procure their title; can you tell what impressions were communicated to the said George, or to the said Sidney, respecting their claims; will you state whether they were told that they were not the legitimate children of the said Joseph Collins, or that there were doubts on the subject?

5th. Do you know what was said of the value of their claims; was

it represented to them as valuable, or otherwise, and if not valuable, why it was not so; who claimed the land against them; who disputed their title?

6th. Will you state whether it was represented that Samuel Kitchen had the right to the land, or that they could never get it from James Inerarity; will you state each and all the statements that were made to them within your knowledge, and that induced them to make the sale?

7th. Do you recollect how long it was before the sale was made after it was first talked over, and why it was delayed?

8th. When did George Collins and Sidney E. Collins leave Alabama; what was George Collins's employment when he lived in Mobile; what was the employment of Sidney; have you heard that George is dead; when and where did he die?

9. Have they resided in Alabama since their departure; how often have they visited Alabama within your knowledge?

10. If you know any fact material to the plaintiff, or to the evidence you have given in this cause, or to the matters in controversy between the parties, answer fully and at large.

CAMPBELL & CHANDLER, *for plaintiff.*

Endorsed. Filed 24th February, 1845.

JNO. FITTS, *Clerk.*

Testimony of Mrs. Lewis.

Mrs. Margaret Lewis being produced before me, Sidney T. Douglass, at her residence in the county of Mobile, on this the twenty seventh day of February, A. D. 1845, and being by me duly sworn upon the holy evangelist of Almighty God, in answer to the annexed interrogatories, deposes and says as follows, to wit:

To the first interrogatory she says: She was acquainted with the said Joseph E. Collins, deputy surveyor under the Spanish government, and also with Elizabeth Wilson; she knew them at Pascagoula.

To the second interrogatory she says: She was at Joseph E. Collins's house at Pascagoula during his last sickness, and was present at his funeral; was also present when he died; said Joseph E. Collins died in the year 1811. She is enabled to remember the year precisely from his death occurring the same year of her marriage; she was married on the 5th May, 1811; she has now in her possession the certificate of her marriage, also the marriage contract entered into between her and her late husband, Edwin Lewis; they both bear date May 5th, 1811, and were made on the day they bear date; does not recollect the precise time of his death, but it was some time during the summer of the same year of her marriage, and not long after she was married. She recollects of walking in the garden of Collins on the day of his funeral, and noticed that grapes were then ripening.

To the third interrogatory she says: That she knew George and Sidney E. Collins, but cannot state exactly the years when either was born.

To the fourth interrogatory she says: She visited Joseph E. Collins's house during his last illness, and remembers seeing the boy Sidney there; from her recollection of his size and appearance then, she thinks he was about three years old.

To the fifth interrogatory she answers: That at the time of Joseph Collins's death, Sidney was a good stout boy, and could run about the house and do little turns in the house; recollects during Joseph Collins's last sickness of Sidney's being called upon by Mr. Collins to bring him his walking stick and a glass of water, which he repeatedly did.

To the sixth interrogatory she answers: She knows nothing further than what may be stated by her in reply to the annexed cross interrogatories.

Cross interrogatories.

To the first cross interrogatory she says: So far as she knows, after her connection with Collins, she was called Mrs. Collins, and her children bore the name of Collins. Mr. Collins addressed her by the name of Betsey; she appeared to be the mistress of his family.

To the second cross interrogatory she answers: Elizabeth Wilson, before her marriage with Laniet, had four children, one of which was of premature birth; does not know whether all of the children were born after her connection with Collins, nor which of the births was premature; does not recollect the date of the birth of either of the children; does not know when any of them died.

To the third cross interrogatory she answers: That Collins's house, in which he died, was at the mouth of the bayou du Rien, on the Pascagoula river. She is not informed as to the other matters asked of her in this interrogatory.

To the fourth interrogatory: She knows of nothing of the matter therein referred to.

To the fifth interrogatory she answers: That she knows nothing of any of the matters therein asked.

To the sixth interrogatory she answers. That she knows nothing of what is inquired of her in this interrogatory.

To the seventh interrogatory she answers: That she knows nothing asked of her in this question.

To the eighth interrogatory she answers: That she does not know when George Collins or Sidney E. Collins left Alabama. George Collins was employed in Mobile in keeping store for Joseph Krebbs, and Sidney was following the carpenters' business with Mr. Moore in Mobile. She was informed of Mr. W. D. Primrose, last summer, that George Collins was dead; she has no other knowledge, or has she heard any other rumor thereto.

To the ninth cross interrogatory she answers: That George Collins went away, and afterwards returned; this was when he sold the country property to Mr. Kennedy; during this visit he staid about two weeks, then he went to Mississippi, as she understood; does not know of either of them having visited Alabama since.

To the 10th cross interrogatory she says: That she can state nothing further to the benefit of either party.

her
MRS. MARGARET X LEWIS.
mark.

Copies of dates of the instruments referred to in the foregoing deposition of Mrs. Lewis, and exhibited to me, viz: Marriage agreement between Edwin Lewis, of Franklin, and Margarite Bondreaux, signed and sealed this 5th May, one thousand eight hundred and eleven; certificate of the marriage of Edwin Lewis and Margarete Bondreaux, dated parish of Pascagoula and territory of Orleans, May 5th, 1811.

Attest: SIDNEY T. DOUGLASS, [L. S.]
Commissioner.

Interrogatories to Mrs. Rachel Moore.

Interrogatories to be propounded to Mrs. Rachel Moore, a witness for the defendants in a certain suit pending in the circuit court of the United States, at Mobile, in which Sidney E. Collins is plaintiff, and Wm. R. Hallett and Robert L. Walker, executors of Joshua Kennedy, the heirs of Joshua Kennedy, and others, are defendants:

1st. Are you acquainted with Sidney E. Collins, the plaintiff in this suit; did you know him in the year 1830; did he then, or had he before that time, lived at your house in Mobile?

2. Do you know of the said Sidney E. Collins in that year having sold to Joshua Kennedy his claim to certain property in the city of Mobile; if yea, what do you know of Sidney's age at the time of said sale; did Sidney make to you any statement of what his age was at that time; if yea, what did he state; can you refer to any event to fix the date of this transaction and statement; if so, what is it?

3d. Did Sidney E. Collins, before that time, speak of his age, and what did he say as to being of full age, or otherwise?

4th. Was your acquaintance with Sidney E. Collins intimately or otherwise; were you acquainted with George Collins, the brother of Sidney; which was the oldest; describe the two by their complexions and the color of their hair.

5. If you know any thing material to the issue between the parties, or to the subject in controversy, or to the matters of evidence to which you have been interrogated, answer fully and at large.

STEWART & EASTON, *for defendants.*

Endorsed. Filed 15th February, 1845.

JOHN FITTS, *Clerk.*

Cross interrogatories to Rachel Moore.

Cross interrogatories to be exhibited to Rachel Moore, a witness for the defendants, in a cause pending in the court of chancery at Mobile, in which Sidney E. Collins is plaintiff, and Hallett and Walker, and others, are defendants:

1. When did Sidney E. Collins come to live in the city of Mobile; how long did he remain here; in what capacity did he live in your family; was he an apprentice of your husband; for what length of time did he come under indentures; have you these indentures, and where are they; when did these indentures expire?

2. Do you know what Sidney E. Collins had to do with Joshua Kennedy in the matter of that contract; did you see Kennedy, or know of his conversation with Sidney; how often did he see him; was there much effort on his part to get said claim; did he talk to you or to your husband about it; what did he say?

3. Do you know why the papers were made to Wm. Kitchen; Mrs. Moore will please state all that she may know that will show Mr. Kennedy's object, his efforts and conduct in this matter, and all the inducements offered to said Sidney E. Collins.

CAMPBELL & CHANDLER, *for plaintiff.*

Filed, February 24, 1845.

JOHN FITTS, *Clerk.*

Testimony of Rachel Moore.

Mrs. Rachel Moore, being duly sworn on the holy evangelists of Almighty God, on this the 25th day of February, A. D. 1845, deposes and says, in answer to the annexed interrogatories, as follows, to wit:

To the first interrogatory she says: She is acquainted with Sidney E. Collins, the plaintiff in this suit; she knew him in the year 1830, and for some years previously; he resided in the family of witness in the year 1830, and for several years previously.

To the second interrogatory she answers: That she knows of the sale by Sidney E. Collins of his property in Mobile to Joshua Kennedy, and heard Sidney E. Collins speak of it at the time said sale took place, or not to exceed a week after. Witness asked Sidney why he made such large trades without asking the advice of witness or Mr. Moore; to which he replied he was of age, and asked them no odds. Said Sidney had previously bound himself to Mr. Moore in the carpenter's business, when he was understood and represented himself to be nineteen years of age, and was to serve five years, or until he was twenty-four years old, and entered into indentures to that effect; at the time referred to he had served three years or more of his time. She is enabled to fix the date of the year from the circumstance of her daughter Palmela being born on the last day of November, in the year 1831; and these transactions and conversations took place about a year previously. Sidney E. Collins told witness that he had got one thousand dollars of Kennedy for his land.

To the third interrogatory she answers: That Sidney E. Collins, previous to the transaction, frequently spoke of his age, and asserted that he was of full age, meaning that he was twenty-one years of age. About six months after the time spoken of there was a difficulty between said Sidney and Mr. Moore, and Sidney was desirous to leave Mr. Moore's

employ; on that occasion he asserted he was of age; Mr. Moore reminded him, although he was of full age, he had his indentures until he was twenty-four years old. Witness also heard Sidney make the same declaration frequently, both before and after the difficulty with Mr. Moore took place.

To the fourth interrogatory she answers: That her acquaintance with Sidney E. Collins was intimate. Her acquaintance with George was also intimate. George was the oldest of the two brothers, and had red hair and a fair complexion. Sidney was of a dark complexion, and had black hair.

To the fifth interrogatory: She knows nothing farther than what she will state in her answer to the cross interrogatories.

Cross interrogatories.

To the first cross interrogatory she answers: She does not know when Sidney E. Collins first came to live in Mobile. Thinks he left Mobile about six months after he made the trade with Kennedy, and was absent about six weeks, when he returned and staid a few days, and then went back to Mississippi. He lived in witness' family in the capacity of an apprentice to her husband in the carpenter's business. He came under indentures, to the best of her recollection, for five years, or until he should arrive at the age of twenty-four years. She cannot state the exact date when the indentures expired, and has not said indentures, or does she know where they are.

To the second interrogatory she says: Does not know any of the particulars of the dealings between Collins and Kennedy. Saw Collins and Kennedy once together only. She knows, however, for a week or more, Sidney was in the habit of hunting daily after Mr. Kennedy for the purpose of making this trade, or completing it, and heard Sidney complain of not being able to find him; and Sidney requested witness, if she should see Kennedy, to inquire of him where he could see him without going to his house. Knows of no effort on the part of Mr. Kennedy to get Collins' claim. Mr. Kennedy never talked to witness on the subject of the claim. Does not know whether he spoke to Mr. Moore on the subject.

To the third interrogatory she answers: She does not know why the papers were made to Wm. Kitchen, if so made, as to which she has no knowledge; and, being unable to give any further information as to any of the matters propounded to her, further this deponent saith not.

RACHEL MOORE.

Interrogatories to Wm. M. Garrow.

Interrogatories to be exhibited to the Hon. Wm. M. Garrow, a witness for the defendants, in a certain suit pending in chancery in the U. S. circuit court at Mobile, in which Sidney E. Collins is plaintiff, and William R. Hallet and Robert *R.* Walker, executors of Joshua Kennedy, the Branch Bank at Mobile, the heirs of J. Kennedy, James Campbell, and others, are defendants.

1st. Are you acquainted with the property in dispute in this cause,

being the south half of the tract east of Royal street, and lying between St. Louis street and the Orange Grove?

2d. Do you know of the suit having been brought by Robertson and Barnwell against Kennedy and Kitchen, or Kitchen alone, in the circuit court of Mobile county for the recovery of this ground; were you present in court when said suit was tried; by what reason was your attention directed to said trial; were you as counsel, or otherwise, attending to said suit; upon what point or ground did it go off in favor of the defendants?

3d. Was said suit one that involved much litigation; was it urged with industry on the part of the plaintiff; was the plaintiff, or his counsel, confident, or did he entertain strong hopes of success; what did the parties think of it at the time, and what were your opportunities of knowing their opinions, or the opinions of their counsel; what was the probable expense of Kennedy in defending said suit?

4th. Were you present at a sale of the Orange Grove tract, and the tract adjoining thereto on the north, and extending to the Three Mile creek, made by James Inerarity in pursuance of a decree of the chancery court of Mobile; were you concerned in said sale, and how; when and where did said sale take place; had it been advertised, and how long; was it attended by many persons; were there many bidding, and much competition among the bidders; were there several companies of capitalists formed for purchasing said land; were they present, and did they participate in the bidding by themselves or agents; what were the terms of said sale as to cash or credit; how much did those two tracts, on that occasion, sell for; what quantity of land did those two tracts, then offered for sale and sold, contain; what was the general opinion then entertained or expressed as to the price bid and paid for said lands; what was your own?

5th. Please to describe the location of the lands so sold; do they lie contiguous to the Baudain tract; how near do they approach the lands the subject of this suit; have they a large extent of water front; how would the lands the subject of this suit now compare in point of value with similar lands of the Orange Grove fronting on the river, and lying contiguous to the northern Baudain line; also in the year 1830?

6th. State if, in the year 1830, you were assessor of taxes for the city of Mobile; had you as such occasion to consider the value of these lands; can you call to mind the fact of making an assessment of these lands in 1830; did you or not find a difficulty then in assigning any definite value to it; state whether or not vacant or unimproved lands in the city in past years have been usually assessed greatly beyond their value; and if so, how far; what was, in your best judgment, the cash value of those lands in 1829 and 1830; what was their cash value in 1820 and 1825?

7th. Describe their condition in 1829 and 1830, and their position as compared with the rest of the then city; how far has the city extended upwards and beyond these lands since 1830; what has occasioned this growth of the city in that direction; how long have you lived in the

city of Mobile, or the vicinity; and how long have you been conversant with the property, growth, and progress of improvements in said city?

8th. At what time did property in the upper part of the city, above St. Louis street, come into notice or demand, or begin to be considered relatively valuable or desirable?

9th. If you know anything material to the matter in dispute between the parties, or to the questions in contest, or to the matters in evidence about which you have been interrogated, set forth the same fully and at large in your answer.

STEWART & EASTON,
For defendants.

Filed February 21, 1845.

JOHN FITTS, *Clerk.*

Cross interrogatories to Wm. M. Garrow.

Cross interrogatories to be propounded to Wm. M. Garrow, a witness for the defendants, in a cause pending in the circuit court of the U. S. for the southern district of Alabama, in which Sidney E. Collins is plaintiff, and Wm. R. Hallett and Robert L. Walker, executors of Joshua Kennedy, deceased, and others, are defendants.

1st. The tract of land in dispute contains about four acres, extending from Royal street to the river, and extending north for quantity; state the value of that parcel of land in 1829 and '30.

2d. What was its condition as to improvements; how much of improvements had been placed upon it?

3d. Do you consider that four thousand three hundred dollars bears any proportion to the value of the land then; what is the value now?

4th. What was Robertson's & Barnwell's title; was it good for any thing; have you ever known a title such as theirs (tax titles) succeed in a court in this city?

5th. Who represented the case on the part of the defendant; did Samuel Kitchen take any interest in its management; did Joshua Kennedy; who of these appeared to be the defendant and to claim the property; when was the suit commenced by Robertson and Barnwell, and when tried?

6th. Did you know Joshua Kennedy; what was his character as a shrewd managing man; what was his principal occupations; was he the claimant of a large number [of] inchoate grants issued or purporting to be issued from the Spanish government; did he acquire vast quantities of land under such claims?

7th. Have you any knowledge of the estimate placed by Joshua Kennedy upon the land in dispute; what was his estimate of its value prior to 1830; what at any other time?

8th. Have you had at any time any conversations with Joshua Kennedy upon the subject of the lands in dispute between the plaintiff and his executors and heirs as to his rights to the same? Answer fully and at large to all such conversations, and state what was said by him.

CAMPBELL & CHANDLER, *for Pl'ff.*

Filed, March 1, 1845.

707.

Testimony of Hon. Wm. M. Garrow.

William M. Garrow being produced before me, at my office, in the city of Mobile, and being duly sworn, deposes and says as follows:

To the 1st interrogatory he says: That he is acquainted with the location of the property mentioned in this interrogatory.

To the second interrogatory he says: He knows of a suit having been instituted by Robertson & Barnwell in the year 1826 against Joshua Kennedy—to which suit Samuel Kitchen afterwards made himself a party—in the circuit court of Mobile county, for the recovery of a tract of land lying immediately north of St. Louis street, and east of Royal street, bounded on the north by the Orange Grove, and extending to Mobile river. This case was tried twice, and witness was present in court at both trials. Witness was not attending court as counsel but as a witness, having been previously employed by Robertson & Barnwell to obtain for them from the land office then at Augusta, Mississippi, copies of all the papers then on file or recorded in said land office relating to the Bordain and Collins' claims to the said tracts of land. Deponent attending as a witness for the purpose of proving that the papers obtained by witness were correct copies. At the first trial of the case plaintiffs were stopped at the commencement of the trial by the exclusion of the deed on which they relied, and witness was not examined. The deed was excluded for the reason of its not being attested by two witnesses; the case was then taken to the Supreme Court and reversed. On the second trial witness thinks that he was examined, but does not distinctly recollect the point or ground; it went off in favor of the defendants. At the time of the first trial witness saw, as he thinks, in the hands of Samuel Kitchen a receipt for city taxes on said land, and he is under the impression that the case, at the second trial, was decided in favor of the defendants on the ground that the taxes for which the property had been sold to the plaintiffs had actually been paid, but his recollection is not sufficiently distinct to enable him to say that this was the case. Witness has no recollection of seeing the receipt above referred to at the second trial.

To the 3d interrogatory he says: He thinks that said suit was one that involved much litigation, and was urged with industry on the part of the plaintiff; witness was intimate with Mr. Acre, the counsel for plaintiffs, and had several conversations with him on the subject of the suit, and witness thinks Mr. Acre had strong hopes of success; witness does not know what Barnwell & Robertson's opinions were, and has no means of forming any definite opinion as to the probable expense of Mr. Kennedy in defending said suit.

To the fourth interrogatory he says: He was present at the sale mentioned in this interrogatory, and was concerned in said sale as a bidder on behalf of Mr. James Inerarity; said sale took place in the city of Mobile in the spring of 1831, on Royal street, in front of where the building known as Mrs. Robb's now stands; it had been advertised, but witness does not know how long. Said sale was attended by many

persons; thinks there were several bidders and much competition at first, but when the bidding became high there was but two bidders, one of whom witness thinks was Mr. John Bloodgood, the other was witness; knows of but one company of capitalists formed for the purpose of purchasing said lands; said company was composed, as witness was afterwards informed, of Mr. John Bloodgood, Philip McLoskey, Jonathan Hunt, and Henry Hichcock; Mr. Bloodgood was present; does not recollect whether the others were present or not; the terms of the sale were fixed by the decree, and were $\frac{1}{4}$ cash, $\frac{1}{4}$ one year, and $\frac{1}{4}$ in two years, and $\frac{1}{4}$ in three years, with bond and mortgage. The two tracts sold for forty thousand dollars. They contained, together, about five hundred and seventy acres. The general opinion, at time of sale, that witness heard expressed, was that it was high, and witness should not have bid so much if Mr. Inerarity had not given expressly instructions not to stop short of forty thousand dollars.

To the 5th interrogatory he says: That the lands so sold are situated in the northern part of the city, and are contiguous to what witness understands as the Baudain tract; does not know how near they approach the lands the subject matter of this suit, but supposes in one place about three hundred feet. They have a large extent of water front. Comparing, at the time, the lands in dispute with similar lands of the Orange Grove tract fronting on the river, and lying contiguous to the northern Baudain line, witness would say that the land in dispute is more valuable than the same quantity of land similarly situated in the Orange Grove tract; but witness does not consider the difference in value very great.

To the sixth interrogatory he says: Witness was one of the city assessors of Mobile in the year 1831, and he had occasion to consider the value of these lands. Witness recollects the fact of making assessment of the property in dispute in the year 1831; does not distinctly recollect what sum it was assessed at that year, but witness' impression is that they made one assessment of the whole tract lying between St. Louis street and the Orange Grove tract, and that they assessed the whole at ten or twelve thousand dollars; he did find difficulty in assessing any definite value to said lands. As a mere matter of opinion witness states, that he thinks vacant and unimproved lands have been assessed over their value in past years; witness cannot state how far over their value they were assessed. From witness' best judgment he should say that in 1829 and '30 said lands were worth from five to six thousand dollars cash; does not know their value in 1820 and 1825, witness being away from the city a greater portion of the time between the years named.

To the seventh interrogatory he says: That in 1829 and 1830 said lands, in most parts, were low and miry; thinks there were improvements at the water's edge; of the character and nature of those improvements witness does not recollect well enough to state at this time; as compared with the rest of the city at the time their situation was north of, and out of, what witness then considered the business part of the city, and he thought its value consisted rather in what it might thereaf-

ter become, than for its immediate usefulness for any business purpose. Since 1830 the city has much extended beyond the lands in dispute, contrary to what witness then expected; does not know the occasion for the rapid growth of the city in that direction. Witness considered Mobile as his home since the year 1817, but a greater part of the time he was absent from the city at school until the year 1825. Since the latter named year witness has been conversant with the growth and progress of improvements in the city.

To the eighth interrogatory witness says: That, from 1830 and onward, property in the upper part of the city came into notice and demand, and was sought after as desirable.

To the ninth interrogatory he says: Knows nothing further than what he will state in his answers to the cross interrogatories.

Cross interrogatories.

To the first cross interrogatory he says: He refers for his answer to the sixth direct interrogatory *for his answer* to this question.

To the second cross interrogatory he says: He refers to his answer to the seventh direct interrogatory for his answer to this question.

To the third cross interrogatory he says: Considers that sum as within ten to fifteen hundred dollars of its full value at the time; supposes said property now worth two hundred thousand dollars.

To the fourth cross interrogatory he says: Robertson and Barnwell's title was by purchase of same at a sale for city taxes; does not know whether it was good for anything or not; witness has never known of a tax title succeeding in a court in this city.

To the fifth interrogatory he says: That Elliott and Root represented the case on the part of the defendants; said Kitchen did appear to take some interest in the suit, so also did Joshua Kennedy; judging from their conduct, witness supposed that Kitchen and Kennedy were jointly interested in said suit; by reference to a certified copy of the case, he finds that the suit was commenced on the 23d January, 1826, and was tried on the 25th May, 1826; the second trial took place on the 11th December, 1830.

To the sixth cross interrogatory witness says: That he knew Joshua Kennedy to be a shrewd managing man, and that he was *principly* occupied in perfecting titles to his land; was a large claimant of inchoate grants issued by the Spanish government; thinks he did acquire vast quantities of land under such claims.

To seventh cross interrogatory he answers: That he does not know.

To the eighth cross interrogatory he answers: Does not remember of ever having conversations on the subject.

WM. M. GARROW.

The foregoing answers taken, reduced to writing by me, and sworn and subscribed to in my presence, at Mobile, March 25th, 1845.

SIDNEY T. DOUGLASS, *Commissioner.*

Interrogatories to the Rev. Bishop Portier.

Interrogatories to be exhibited to the right Rev. Michael Portier, bishop of Mobile, a witness for the defendants in a certain suit pending in the circuit court of the United States, at Mobile, wherein Sidney Eugene Collins is plaintiff, and Wm. R. Hallett and Robert L. Walker, executors of the will of Joshua Kennedy, Jas. Hastie and wife, and the other heirs of Joshua Kennedy, deceased, the Branch Bank at Mobile, James Campbell, and others, are defendants.

1. Where do you reside; what is your station or office in the church, and of what church?

2. As such officer, have you the care, custody, and charge of the records, register, and ancient archives of the Church of the Holy Conception of Mobile; when did you come to have possession and charge of them; where did you find them, and where have they been deposited; from whence did you receive them into your custody and charge; was the person from whom you received them the proper custodian of said records; are they the received and accredited records of your church, and are faith and credit given to them by the officers and members thereof?

3. State what was the extent and jurisdiction of the Church of the Holy Conception of Mobile from the year 1800 to the year 1813; did it include Pass Christian, Baloci, and Pascagoula, or either of these places?

4. State if you find among said records any register of marriages and baptisms made by the priest, or other clerical officer in charge of said church and parish, from the year 1800 to the year 1813; what is the condition of said register as to preservation and the regularity with which they appear to have been kept; by whom were said registers made and certified, or attested, and during what periods by each; were they the appropriate persons to make such registers, during the periods they are certified by them respectively?

5. Are said registers of marriages and baptisms continuous from year to year, during the period before specified; are there some entries for every year; and, if not, during which year thereof are there no such entries?

6. Do you find, after a careful examination of said registers of marriage, any entry of the marriage of Joseph or Joseph E. Collins and Elizabeth Wilson with each other, or of either of them with any other person?

7. State if, from the year 1805 to 1813, there are entries in said registers of marriages and baptisms of persons and children at Pascagoula, Baloxi, or Pass Christian, or either; and if so, which; how many of each are there for each of those places, or in that region of country, in each year from 1805 to 1813?

8. From the *ecleastical* of that period, and from the register aforesaid before you, what appear to have been the facilities for persons then residing at Pascagoula to obtain the services of a priest for celebrating the

rights of marriage; what other facilities for the same purpose were extended to them?

9. Are you an expert in the civil and canon laws of Spain on the subject of marriage, in force in this country during the times of the Spanish colonial or provincial government here? If yea, state how a marriage could be legally contracted there, and what was necessary to make it lawful and binding; what was the custom of this country, during said time, as to the contracting of marriages?

10. If you know any thing further connected with the matter in issue between these parties, or the subject of suit or dispute, or with the matters of evidence to which you have been interrogated, answer and set forth the same fully and at large.

STEWART & EASTON,
For defendants.

Filed February 18, 1845.

JOHN FITTS, *Clerk.*

Cross interrogatories to Bishop Portier.

1st. Were you at any time a subject of the King of Spain, or an inhabitant in the dominions of that Crown; at what time and place; will you state whether any digest or code of laws has been formed which embodies the laws of that kingdom and its dependencies; what is that code called?

2d. Will you state whether the decrees of the Council of Trent, prescribing public marriages in the presence of a priest, or person in orders, and declaring all others null, have ever been adopted as the law of Spain; has not the ancient law of the church prevailed there at all times; and is any thing more than the consent of parties requisite to constitute a valid and binding marriage in any portion of the Spanish domains?

3d. Will you state whether marriages not made in the face of the church, in Spain, have any other consequence to the parties than to subject them to censure from the church; does the validity of marriage depend on any such fact?

4. Will you state whether clandestine marriages, and marriages celebrated without the intervention of the church in any manner, are invalid by the laws of Spain if the parties are able and willing to contract; consensus non concubitus facit nuptias—is that not a maxim of Spanish laws; how long have you lived in the United States; how long in that portion that formerly belonged to Spain?

CAMPBELL & CHANDLER,
For plaintiffs.

Filed February 24, 1845.

JOHN FITTS, *Clerk.*

Testimony of Bishop Portier.

Michael Portier being produced before me, in the city of Mobile, on the *the* 14th day of April, A. D. 1845, and being by me duly sworn on the holy evangelists of Almighty God, deposes and says:

To the 1st interrogatory: Resides in the city of Mobile, where he has resided for more than fifteen years, in the city or county of Mobile, as the chief pastor of the members of the Roman Catholic Church in Alabama and in the Floridas, under the title of the Bishop of Mobile.

To the second interrogatory he says: After the fire of 1827, in the month of October, witness received the records of marriages, baptisms, and of deaths, when the funeral services of deceased were performed by a Catholic priest, from Mr. Leon Nicholas, who was at that time a trustee of the Church of the Holy Conception of Mobile; the said records have remained, since October, 1827, under the custody of witness, or under the charge and custody of the Catholic priest, whom witness had appointed to officiate as his assistant in the Church of the Holy Conception of Mobile; as true and accredited records, they are received by the officers and members of the Roman Catholic Church; are received as such by the State of Louisiana; by the Government of France and Spain; witness, moreover, states that, taking into consideration the changes which affected the political government of Mobile, the records of the Parish Church of the Holy Conception have suffered less than other public records.

To the third interrogatory he says: It would be difficult to give an answer respecting the limits of the parish of the Holy Conception of Mobile from the year 1800 to the year 1813, but he is certain that the parish priest of the said church had a quasi jurisdiction, or could celebrate marriages as the proper officer in Pass Christian, Baloxi, Pascagoula, and even as far as the political jurisdiction of Spain extended in the States now of Mississippi and Louisiana, especially in places where no regular clergyman of the same Catholic church was settled, or had been.

To the 4th interrogatory he says: The records of baptism and marriages of the parish of the Holy Conception of Mobile have been remarkably well kept from the year 1800 to the year 1813; from the year 1798 to the 23d August, 1800, by the Rev. Constantine McKenna, parish priest, acknowledged as such by the certificate of the Episcopal Visitation of the Rt. Rev. Dr. Penalver, Bishop of Louisiana and Floridas, registered in the records of baptism under the date of the 20th April, 1798. From the 15th October, 1800, by the Rev. Juan Franc. Vaugeris, parish priest, to the 4th July, 1807, the last record entered by him on that day. From the 14th day of December, 1807, to the 15th day of November, 1808, there are but seven certificates of baptism, and three certificates of marriages, recorded and signed by the Rev. Juan Brady and Francisco Lennan, who seem to [have] exercised the functions of the Holy Ministry in the parish of Mobile as missionaries rather than regular appointed priests. From the 15th November, 1808 to 1814, the records have been kept by the Rev. Vincente Gener, and seem to have been kept with great accuracy and diligence.

To the 5th interrogatory he says: This is fully answered in his reply to the fourth interrogatory.

To the 6th interrogatory he says: He finds no record of marriage

between Joseph or Joseph E. Collins and Elizabeth Wilson from 1785 to 1822 among the marriage records of the Church of the Holy Conception. In the register of baptisms there are recorded as baptized in Pascagoula, by Father Juan Francisco Vaugeris, the 3d day of October, 1804, Mary Ann, daughter of Guilliemo Jackson, native of the United States, and of Elizabeth Wilson, native of Natchez, born 27th Aug., 1803; 10th May, 1807, Elizabeth Jackson, legitimate daughter of the said Guilliemo Jackson and Elizabeth Wilson, born 19th March, 1806; then in the year 1806, 19th January, were baptized at Pascagoula, by Father Vincente Gener, Amelia, natural daughter of Benjamin Lieman and of Elizabeth Wilson, born 25th June, 1813; Matilda, natural daughter of the same, born 22d April, 1815.

To the 7th interrogatory he says: It appears by the records that the Bay of St. Louis, Pass Christian, Beloxi, Pascagoula, and other places in the vicinity, have been regularly visited in the years 1801, 1802, 1803, 1804, and 1805, by the Rev. Juan Francisco Vaugois, and that he then administered the sacrament of baptism and marriage. In the years 1811 and 1812, Father Francisco Leamon visited with the license and by the authority of the Vicar General of the Bishop of Havana. Father Coleman, parish priest of Pensacola, visited and married three couples in Pascagoula.

To the 8th interrogatory he says: It is fully proven by the records that Pascagoula had been regularly visited by the Rev. Juan J. Vaugois during the years 1800, 1801, 1802, 1803, 1804, and 1805; witness has not found any record of marriages celebrated at the said place from the year 1805 up to the 22d May, 1811. In the opinion of the witness it was very easy for the Catholics living at Pascagoula, either to come to Mobile or to send for the clergyman stationed there, with the exception of a few months; the parish of the Holy Conception enjoyed the services of a canonical appointed pastor from the year 1800 to the year 1814.

To the 9th interrogatory he says: The civil and canonical law of Spain, on the subject of marriage, is and was, certainly from 1800 to 1814, in perfect harmony or accordance with the decree of the Council of Trent, concerning clandestine marriages. This decree, if not promulgated in Louisiana and Floridas, has been fully sanctioned by practice and custom, without any known exception; in Spain and in the Spanish colonies, the parish priest is both the civil and religious minister of marriage; his presence with that of two other witnesses is required to validate a marriage.

To the 10th interrogatory he says: He does not know precisely the matter at issue between the parties, and the subject at suit and in dispute. But if the matter at issue depends upon a marriage between Joseph or Joseph E. Collins and Elizabeth Wilson, and the validity of said marriage, witness refers to his answer to the sixth question, by which it is proved by his records before alluded to, that a certain Elizabeth Wilson had two natural daughters, one born 25th June, 1813, the other born the 22d April, 1815; this fact seems to prove that she was not known as the widow of Joseph or Joseph E. Collins.

Cross interrogatories.

To the 1st cross interrogatory he says: He has not been a subject of the King of Spain, or an inhabitant of the Kingdom of that Crown. The principal laws of Spain are embodied in the code named in Spanish Las siete partidas, and which witness has in his library; witness has heard of a collection of laws, decrees, ordinances, and regulations, which emanated from the Council de la Indias for the government of the Spanish colonies.

To the 2d cross interrogatory he says: That the decree of the Council of Trent requires, for the celebration of marriages, the presence of the parish priest or of his vicar; a titular bishop has jurisdiction in such a matter over all his diocese per se, or by his delegate; a deacon, though in orders, is not and can not be the witness required by the Council of Trent; the decree of the Council of Trent prohibiting clandestine marriages and declaring them null, has been received in Spain, and in all the dominions of that Crown, soon after it had been published, and still regulates the marriages in said kingdom; a marriage can not be valid in Spain, unless the parties are of proper age, free, that is, unmarried, give their voluntary consent in the presence of the parish priest and of two other competent witnesses.

To the third and fourth cross interrogatories he says: Refers to the foregoing part of his answer to this question; as to the supposition that it is a maxim of the Spanish law, that consensus non concubitus facit matrimoniam, witness will observe, that the consensus must be expressed before the proper and legal witnesses required by the Council of Trent, the decree having been received and embodied in the civil law of Spain.

To the 5th cross interrogatory he says: He has lived in the United States since the 4th September, 1817. In Louisiana, Florida, and Alabama, since the 8th January, 1818.

MIGUEL PORTIER.

Examination taken, reduced to writing, and subscribed and sworn to at Mobile, 14th April, 1845.

SIDNEY T. DOUGLASS, [L. S.]
Commissioner.

Interrogatories to Joseph J. Sheffield and others.

IN CIRCUIT COURT OF THE UNITED STATES,
Southern district of Alabama.

SIDNEY E. COLLINS
vs.
WILLIAM R. HALLETT AND ROBERT L. WALKER, executors of Joshua Kennedy, deceased, J. H. HASTIE AND WIFE, and others.

Interrogatories to be submitted to Joseph E. Sheffield, William Jones, jr., A. W. Gordon, witnesses for the defendants in the above stated cause.

1st. Were you acquainted in the years 1829 and '30 with that piece of land in the city of Mobile situated between St. Louis street, Royal street, the Orange Grove, and the Mobile river; what was the cash value of the south half of that piece of land in the years 1829 and '30?

2d. What is the present value of all that part of the city of Mobile embraced within the boundaries of the Orange Grove tract, exclusive of 30 or 40 acres west of bayou Marmot, sold before 1831?

3d. What is the present value of that part of the city of Mobile lying between the south line of the Orange Grove, Royal street, Bloodgood street, and the channel of the river Mobile?

4th. What is the value of the property described in the first interrogatory?

5th. What is about the average of credits, or cash and credits, upon which lands were sold in the city of Mobile from 1830 to 1840?

6th. State how, from 1830 to 1840, you would estimate the cash price or value of lands in the city of Mobile compared with what the same would have brought if sold upon the usual terms of credit, from your recollection of operations made in those years?

7th. Please to state whether, in 1829 and 1830, the lands in the marsh north of St. Louis street had anything like a known and determinate value, or a present value, or was their value rather prospective and speculative, dependant on contingencies, and liable to be variously estimated?

8th. Do you know of any sales of the marsh property north of St. Louis street in 1829, 1830, or in 1831, before the sale of the Orange Grove?

9th. Was the property described in the first interrogatory in the years 1829 and '30, from its marshy state and its situation in the suburbs of the city, in a condition to be laid off and sold in lots (say) 50 by 100 feet; would such lots have been then at all in demand; could a single lot of that size in the property, (standing alone,) have been then filled up and improved without a great disproportion of cost and expense; would not embankments or pallisades have been necessary around such lot to prevent the material used in filling up from spreading on the other lots around, or washing away; could any improvement then have been made on a lot of that size that was likely to pay?

10th. State what you suppose may have been the expense since 1830 of making and maintaining the wharves in front of this property, judging from other wharves similarly situated; what is the average cost per year of keeping a wharf of one of these in repair?

11th. What was about the cost of making one of the long wharves as used in past years, when they commenced at Water street and extended out to the river; what of making one of the present length; how long will a wharf last upon an average; in 1830, did Kennedy's wharf commence east or west of where Water street now runs, and how did it connect with the land; how far out in the river did it run?

12th. In 1829 and '30, how far up north had Water street been made; was the Union press then built; did Jones' wharf, in front of the

Union press, then cover that part of Water street now in front of the Union press; what was the width and length of said wharf; did it lie adjoining St. Louis street, and what was the extent of the length of the Union press?

13th. What improvements were there, in 1829 and '30, on the west side of Water street, south of the Union press, down to St Michael street?

14th. When was the piece of ground spoken of as a dock in the above interrogatory filled up, and by whom?

15th. When was the ground between Water and Commerce streets, and running across Commerce street to the Liverpool, (being on the north side of St. Michael street,) filled up; how much by Sewell, and when; how much by any other person, and when; when was the Liverpool wharf built, (the property here spoken of is the property extending from St. Michael street north 130 feet, and from Water street east to the channel, sold by A. W. Gordon to J. B. Leavins 29th May, 1832;) what were the terms of credit given on this sale, and were the payment with or without interest? Describe the improvements on this property at the time of said sale.

16th. Describe the improvements on that piece of property fronting 130 feet on Water street and running back 200 feet on St. Michael street, at the time of its sale by A. W Gordon to Latham Mitchell on the ninth of May, 1832; what were the terms of said sale as to credit, and whether with or without interest?

17th. Will you state whether, in 1829 and '30, there was strong "down town" interest arrayed against the owners of the property in the upper part of the city; were the men of the down town party men of weight, capital, influence; who were at the head of this party; were their weight sensibly felt to the prejudice of the up town property?

18th. Please to state whether, in 1829 and '30, or about that time, general opinion did not fix upon St. Louis street as what would be the northern limit of the city for some years to come; do you know of a purchase of a piece of land made by any of the down town property holders along the south side of St. Louis street, running to the channel of the river, which was then understood or avowed to be made with a view of putting a northern limit to the city; did they or not pay a very high price for said land with that object?

19th. Do you know of the mayor and aldermen of Mobile, before the year 1830, making claim to the property described in the first direct interrogatory, below high water mark, under the act of 1824, granting the front property to the city; what was thought of the city's right generally, and by yourself; did the mayor and aldermen of the city of Mobile sue Joshua Kennedy for this property?

20th. Do you know of any persons compromising with the mayor and aldermen of Mobile, or purchasing their right to the front property under the said act; if so, who were they, and what sums were paid for the city's right?

21st. In 1829 and '30, where stood the house farthest up town on

the east side of Water street, and what kind of a house was it; was Commerce street then in existence, had any part of it been made, or was it then contemplated to make any such street; where was the cotton received at Mobile then landed, and where was it stored; what was the range of the steamboat landings principally; between what streets, north and south, was the business of the city then chiefly transacted; where then stood the most northerly dry goods store on Water street; how many bales of cotton were received in Mobile in the winter of 1829 and '30, and what was the population of the city in 1830; what are about the annual receipts of cotton now, and what its present population?

22d. Has not the progress of the city of Mobile up stream, since 1829 and '30, been such as greatly to exceed the expectations entertained by nearly every body here; in 1829 and '30, to the best of your belief, do you think it was anticipated then by many persons here that 450,000 or 500,000 bales of cotton would be received in the city in one season within 15 years thereafter, or that its population would reach 15 or 20 thousand within that period?

23d. In the years 1829 and '30 was improved property much in demand in the northern extremity of the city, on the water side, and was it easy or difficult to procure *tenements* for the houses?

24th. State if, in 1829 and '30, the Union press was not inconveniently situated for business, from its distance out of town, or its remoteness from the ordinary business range; were not the industrious efforts of the owners of said press, and their extensive acquaintance with the country planters and merchants, among the main causes of getting any cotton landed or stored there?

25th. Will you state whether, in 1829 and '30, the improved part of the city did not afford ample space for the amount of its business then, and which way did the influences then seem to preponderate, that would carry it up or down?

26. Please to state whether the prospects of Mobile in 1829 and '30; as then generally rated, would class it as a large commercial village, or an important commercial emporium and seaport?

27. Has the city property in Mobile, in past years, been taxed about its cash value, or above it generally?

28. Were you present at a sale made in the spring of 1831, by James Innerarity, of a tract of land known as the Orange Grove, &c., pursuant to a decree in chancery; how many rival companies were formed to buy said lands; was there much competition among the bidders at said sale; who was the best bidder, and at what price?

29. State for whom the Orange Grove, &c., was purchased at the sale spoken of in the preceding interrogatory; were they persons who had been until then of the down town interest or party; was it avowed or understood at the time that this purchase was merely a speculation founded on the supposed value of the lands, or had the purchasers a further and ulterior object in making said purchase; if so, what was that object?

30. Was there an "up town" company also formed to buy the Orange

Grove at said sale; who composed the up town company; was Joshua Kennedy one of this company; who was appointed to bid for this company at said sale, and what was the limit they gave him; what was Joshua Kennedy's limit, and what was his opinion of the purchase made at the time?

31. Do you know of any member of the company who purchased the Orange Grove appearing the same day of the sale rather tired of his purchase, or intimating a willingness to relinquish it? Please state who this individual was.

32. What event in the history of Mobile first gave a marked impulse and estimation of property in the upper and water side of Mobile, particularly to marsh property east of Royal street and north of St. Louis street?

33. Did property commence rising in the upper and water side of Mobile almost immediately after the purchase of the Orange Grove by the company; did it continue to rise, and up to what time; when did it reach its highest point?

34. Were there after 1831 and until 1836, many sales and resales of the marsh property east of Royal and north of St. Louis street; did many persons become interested in the property in that region; was much capital invested then?

35. State about what time the purchasers of property in this region found themselves unable to resell without loss.

36. When did this part of the city begin to be built up; what houses are there in the city, east of Royal street and north of St. Louis street, which have not been built since 1836? Specify them.

37. How far north have the improvements in this region been extended?

38. How many steam cotton presses and brick warehouses are there in the city of Mobile, east of Royal and north of St. Louis streets; what number of bales of cotton can they store at once; what proportion of the whole crop received in Mobile was stored and compressed in the Union press, and the warehouses and presses north of St. Louis street, in the season of 1843 and 1844?

39. From your knowledge of the history of property in the city of Mobile, and of its owners, state your opinion whether the improvements of this upper and marsh region have not been forced somewhat beyond the wants of the city by the implication of a great many individuals in the Orange Grove speculations; will you state whether you do not know that many persons have been obliged to build there to escape being ruined by their speculations; state, also, whether you are not of opinion that the height to which property rose during the speculative mania of 1835 and '36, does yet give something of a false estimation to property in Mobile; do people now speak of the price of property as what it will actually sell for; is it so assessed?

40. State in what year, or about what time, water lots north of St. Louis street began to be rated, offered, or sold at so much the first foot?

41. If you know anything material to the matters in issue between

the parties, or to the subject of controversy, or to the matters of evidence as to which you have been interrogated, be pleased to answer fully and at large.

STEWART & EASTON,
April 4, 1845.— *For defendants.*

Filed April 4, 1845. JOHN FITTS, *Clerk.*

Cross interrogatories to Shiffield et al.

Cross interrogatories to be submitted on behalf of the plaintiff, Sidney E. Collins, to Joseph E. Sheffield, A. W. Gordon and Wm. Jones, jr., witnesses for the defendants, in a certain cause depending in the circuit court of the United States, in which Sidney E. Collins is plaintiff, and Wm. R. Hallett and Robert L. Walker, executors of the last will and testament of Joshua Kennedy, deceased, and others, are defendants.

1. Will you state who was in possession of, or claimed title to, the land lying north of St. Louis street, and east of Royal street, extending half way to the Orange Grove line, when you came to Mobile; did any person offer to sell it to you, or either of you?

2. Were you acquainted with George or Sidney E. Collins; do you know any circumstances of the sale by them to Joshua Kennedy of the land above described; do you know what Joshua Kennedy said to them of their title; do you know what he said to them of its value; do you know what reason he gave for his purchase? Answer fully.

3. Did either of you purchase lands in St. Louis street in 1829–'30; what price did you give for land there; what did you buy; how much improvement had been made on the land?

4. What was the principal business of Joshua Kennedy, during his residence in Mobile; was he considered a dextrous manager of claims to land, especially of those that had a Spanish origin?

5. If you know anything that will explain your testimony, or benefit the plaintiff in this cause, answer the same fully and at large.

CAMPBELL & CHANDLER, *for plaintiff.*

Cross interrogatories filed April 15, 1845.

JOHN FITTS, *Clerk.*

The plaintiff in this cause will move to expunge the answers to many of the interrogatories because they are wholly impertinent, and have no relation to the subject in dispute, but tend to cumber the record.

CAMPBELL & CHANDLER, *for plaintiff.*

Wm. Jones' testimony.

William Jones, jr., being produced before me, in the city of Mobile, on the 17th day [of] April, A. D. 1845, and being duly sworn:

To the first interrogatory he says: That in 1829 and 1830, he was acquinted with the land described in the interrogatory, and his own estimate of the value of the south half of said land, at the time mentioned, was from eight to ten thousand dollars.

2d. To the second interrogatory he says: Has no knowledge of the

present value of the said land, and thinks it a difficult matter for a person to put any thing like a correct valuation upon it.

3d. To the third interrogatory he says: Does not know the present value of the property described in this interrogatory.

5. To the fourth interrogatory he says: The usual credits given on lands sold from 1830 to 1840, was ¼ cash, the balance in one, two, and three years.

4. To the *fourth* interrogatory he says: Estimates its present value, at one hundred and fifty thousand dollars.

6. To the sixth interrogatory he says: He cannot state of his own knowledge the difference between cash and credit sales at the time referred to; few could then buy for cash, but little money being in Mobile at the time, and property sold at high prices, when sold on time.

7. To the seventh interrogatory he says: Said lands did not possess any known and determinate value, their value being dependant on contingencies, and were liable to be variously estimated.

8. To the eighth interrogatory he says: He does not know of any sales of the said property prior to the sales of the Orange Grove tracts.

9. To the 9th interrogatory he says: In the years 1829 and 1830 the property was not in a situation to be laid off, and sold in lots of 50 by 100 feet, and to be built on without filling up; witness does not consider that any improvement could then have been made that was at all likely to pay; wharf property might have paid something, but little if anything.

10. To the 10th interrogatory he says: The making of a wharf, in front of said property in 1830, the size of Kennedy's, would have cost from four to five thousand dollars, and will cost from two to three hundred dollars to keep one in repair, per year; could now build such wharves at from two to three thousand dollars, being shorter than formerly; wharves last from four to five years. In the year 1830 Kennedy's wharf commenced, east of Water street, and east of where Water street now runs; thinks that Kennedy filled up at the end of his wharf to connect with a ridge of land making out from main land towards the wharf; witness' impression is, the wharf was from 350 to 400 feet long.

12. To the twelfth interrogatory he says: Does not recollect, but thinks Water street lacked some 80 to 90 feet of extending to St. Louis street in 1829 and 1830; the Union press was built in the fall of 1831; Jones wharf, in front of Union press, did not cover that part of Water street now in front of Union press; said wharf commenced east of Water street, between Water and Commerce streets, and was 80 feet wide, and 350 to 400 feet long; said wharf laid ninety-two feet south of St. Louis street.

13th. To the 13th interrogatory he says: There was at the time west of Water street a horse press and cotton warehouse owned by A. W. Gordon, esq., and on the east side of Water street and north of St. Michael street, there was a block of brick buildings; L. Mitchell and witness commenced filling up a lot 76 feet north of the premises of said A. W. Gordon; there was no other ground filled up, except the ground

occupied by the buildings mentioned before in this interrogatory; there was a dock of 50 feet wide, for the admission of vessels, between Jones' wharf and Liverpool wharf.

14. To the fourteenth interrogatory he says: Mitchell and deponent commenced filling up said dock in 1829 or 1830.

15. To the 15th interrogatory he says: The ground spoken of in the question, as lying north side [of] St. Michael street, say 40 to 50 feet wide, was filled up by Sewell in 1822, so as to connect with Liverpool wharf, and the balance by A. W. Gordon in 1827 or 1828; Liverpool wharf was built in the fall of 1822, the terms of credit given on the sales of the property by A. W. Gordon to J. B. Leavens, was ten years credit without interest, for one hundred thousand dollars; there was three-story brick buildings in Commerce street, and two-story brick buildings in Water street at the time of said sale.

16. To the 16th interrogatory he says: The improvements on the property, at the time of sale, by A. W. Gordon to Latham Mitchell, consisted of a horse cotton press and warehouse; the terms of sale were ten years credit, payments annually, for the sum of forty thousand dollars, without interest.

17. To the 17th interrogatory he says: There was a strong down town interest arrayed against the owners of the property up town at the time mentioned, viz., in 1829 and 1830; said company consisted of Hunt, Ames, McLoskey, and others, who were men of weight and of capital, and witness thinks their weight sensibly fell to the prejudice of the up town property.

18. To the 18th interrogatory he says: General opinion did seem to fix upon St. Louis street as the northern limit for the city; witness was, however, of a different opinion, being of the belief the city would extend much beyond St. Louis street; there was a company lot purchased in 1826 of Innerarity for 10,000 dollars, being 97 feet from Royal street, extending to the channel of Mobile river; he looked upon the price as high; witnesses valuation being seven thousand dollars, at which price he offered to buy; it was generally understood that said purchase was made for the purpose of putting a check to the upward progress of the city.

19. To the 19th interrogatory he says: Understood that the mayor and aldermen of Mobile did lay claim to said property; does not know of his own knowledge; it was the opinion of many their title was good; witn ss was of the same belief; some, however, thought different; understood the mayor and aldermen sued Kennedy for the property below high tide water; of this suit does not know positively of his own knowledge.

20. To the 20th interrogatory he says: Joshua Kennedy compromised with the city and paid them three hundred and fifty dollars for a piece of ground of 76 feet, which witness afterwards bought of Kennedy; witness relied more on the city for his title than on Kennedy, as the latter only gave him a quit claim deed; witness also subsequent to this bought the same property of Mr. J. Innerarity.

21st. To the 21st interrogatory he says: The brick buildings of Gordon

was the farthest up town, east of Water street; Commerce was in existence; it was made in front of Gordon's buildings, but not north of it; it was contemplated at that time to lay out Commerce street; the cotton was received at that time mostly between Liverpool wharf, situated north side St. Michael street and the Government street wharf, and was stored at McLoskey's warehouse on Conti street; Eslava's warehouse on Royal street, St. Francis street warehouse, owned by Jones and Mitchell, in Gordon's warehouse, and considerable quantities in vacant lots; the landing for steamboats then was between Liverpool wharf and Government street wharf; business was chiefly carried on between Liverpool wharf and Conti street; the farthest dry good store between St. Francis and Dauphin streets; from 80 to 100,000 bales of cotton was received in Mobile in the season of 1829 and '30; does not know the extent of population; supposes about 5,000 persons; present population about 20,000 persons.

22d. To the twenty-second interrogatory: The progress of the city of Mobile up stream since 1829 and '30, has far exceeded the most sanguine expectations entertained by nearly every one; witness belief was, that when the Indian titles excluded from the State there was sufficient soil *soil* to warrant the expectation that five hundred thousand bales of cotton would be received in Mobile; many differed in opinion on that subject, and had no idea that the receipts of cotton at Mobile for one season would ever reach 500,000 bales; witness was also of the belief the population would reach twenty thousand, but not so soon.

23d. To the 23d interrogatory he says: At the time such property was in very little demand; many tenements were vacant, and tenants could not be procured; the buildings of A. W. Gordon, many of which were vacant.

24. To the 24th interrogatory he says: The Union press was not built in 1829 or 1830; there was a brick shed built on south side of said lot, and adjoining Gordon's warehouse.

25. To the 25th interrogatory he says: The improved part of the city did afford ample space for the amount of its business in 1829 and 1830; Dauphin street appeared to be the centre of business, and it was difficult to tell what way the influence then used would carry all the business.

26. To the 26th interrogatory he says: He thought himself that some day Mobile would be a large place, but that the city grew much more rapidly than he then expected.

27. To the 27th interrogatory he says: Property has been assessed far above its cash value, in some instances double its value.

28. To the 28th interrogatory he says: Was present at the sale mentioned, and two companies were formed for the purpose of purchasing same, an up town and a down town party, and the competition was only between the two parties; John Bloodgood was the best bidder at 40,000 dollars.

29. To the 29th interrogatory he says: Said purchase was made for the down town company; the individuals composing said company be-

ing previous to said sale of the down town interest; witness' opinion is that it was done for the purpose of putting a check to the upward growth of the city, and also with the view of enhancing the value of property situated down town.

30. To the 30th interrogatory he says: There was a company formed to purchase the Orange Grove at said sale; said company was composed of A. W. Gordon, L. Mitchell, Jo. E. Sheffield, Joshua Kennedy, and this witness; J. Innerarity was authorized to bid for said company, and the limit was $25,000; Mr. Gordon bid as high as $40,000; J. Kennedy's valuation was $25,000; the company had a consultation together prior to said sale; does not know what Joshua Kennedy's opinion was; thinks it was $25,000 he agreed to.

31. To the 31st interrogatory: He knows of no one of the members of said company purchasing expressing dissatisfaction; witness thought it sold high, and also is of the opinion that if it had not been for the up town and down town competition, it would not have brought over $25,000.

32d. To the 33d interrogatory he says: Thinks the sale of the Orange Grove tract was one of the principal causes, the treaty with the Indians and the acquiring of more soil.

33d. To the 33d interrogatory he says: Property did commence rising, and so continued to rise, until the year 1836, when it reached the highest point.

34. To the 34th interrogatory he says: There were a great many sales and resales; many notes given, and in witnesses opinion but little money was paid; that many persons did become interested; does not think much cash capital was invested.

35. To the thirty-fifth interrogatory he says: In the year 1837.

36. To the 36th interrogatory he says: That portion of the city began to be built up in 1836; one built by Campbell and Cleveland, and one built by Joshua Kennedy on Water street.

37. To the 37th interrogatory he says: The improvements have been extended on the water as far as the warehouse known as Kibbe's; some improvements have been made back, consisting of pickeries and warehouses.

38. To the thirty-eighth interrogatory he says: Four cotton presses are now erected east of Royal and north of St. Louis street, and numerous warehouses; witness does not know the precise number of warehouses; he supposes said warehouses will store at one time from one hundred to one hundred and fifty thousand bales cotton; that ¾ of the crop of the season of 1843–'4 was stored and compressed in the Union press, and presses and warehouses north of St. Louis, in season mentioned before 1843–'44.

39. To the 39th interrogatory he says: He thinks the improvement of the upper and marsh region, mentioned in this question, have been forced beyond the wants of the city; that many who had an interest in the Orange Grove property improved for the sake of realizing something, having been to great outlay of money in the Orange Grove speculation;

does not know of his own knowledge that persons have been compelled to build up the Orange Grove for the purposes inquired of in this question; the height to which property rose during the speculative mania of 1835 and 1836, may possibly yet give something of a false estimation to property in Mobile; however, this witnesses opinion is, that the cash price of property in Mobile is very reasonable; does not know in what way they speak of the price of property, but does not suppose they speak of sales of property at the rate it is assessed; thinks it assessed far over its value, and does not consider purchases made are governed by the city assessment.

40. To the fortieth interrogatory he says: He does not know.

41. To the forty-first and last interrogatory he says: In explanation to his answer to first direct interrogatory, as well as in reply to the general question that the more valuable portion of the south half of the Baudain tract was claimed by the city of Mobile, being that portion of same covered by tide water and extending to the channel of Mobile river, witness viewed this as the most valuable portion of said property by far, and without this portion he would not consider the other worth scarcely half of the sum stated by him, viz., eight to ten thousand dollars; witness always thought the title of the city good as high up as tide water mark; and as a further explanation he will state, in relation to sale of Orange Grove, mentioned in his answer to the thirtieth direct interrogatory, that Innerarity did bid as high as 30,000, and refused to bid any more, when A. W. Gordon commenced bidding, and run the property to 40,000; Mr. Innerarity was instructed to go on bidding until the up town company told him to stop, but he stopped bidding of his own accord.

Cross interrogatories.

1st. To the first cross interrogatory he says: Understood that Joshua Kennedy was in possession; he never offered any of it to witness.

2d. To the second cross interrogatory he says: Does not know.

3d. To the third interrogatory he says: Latham, Mitchell, and witness purchased $\frac{1}{3}$ of 97 feet on Royal street, running to the channel of the river; they purchased of Addin Lewis for four thousand six hundred dollars, $\frac{1}{4}$ cash, balance in one, two, and three years; thinks this was in 1829; also purchased $\frac{1}{6}$ of said lot in 1830 of B. Ames for $3,000, payable as above; witness, as well as Mitchell, viewed the price as very high, and wishing to complete Union press we were compelled to purchase, and made up our minds to give any price in reason; there was no improvements when they purchased.

4. To the fourth cross interrogatory he says: His principal business was that of perfecting his land titles; he also had mills over the bay that he looked after; Joshua Kennedy was looked upon by all acquainted with him in business matters as a dextrous manager, particularly so in claims of Spanish origin.

WM. JONES, Jr.

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Shiffield's Testimony.

Answers of Joseph E. Sheffield to the interrogatories and cross interrogatories hereto appended. The said witness being duly sworn, on this the 18th day of April, A. D. 1845, deposes and says, to wit:

1st. To the first interrogatory he says: Was acquainted with the lot of land in question in 1829 and 1830, and supposes that the whole tract would have sold at that time for about ten to fifteen thousand dollars; the south half might have sold for a little more than the other.

2d. To the second interrogatory he says: Being a non-resident of Mobile since 1835, he knows little of the estimated value of property here.

3d. To the third interrogatory he says: Does not know the boundaries or value.

4th. To the fourth interrogatory he says: Does not know; presumes the property in question has never yielded an annual interest of 8 per cent. on the valuation of $10,000 to $15,000 since 1829–'30 over and above taxes, assessment, &c.

5. To the fifth interrogatory he says: Does not recollect any general rule.

6th. To the sixth interrogatory he says: Has no knowledge of any other price than the cash price; if a credit was given it was at interest at 8 per cent.

7th. To the seventh interrogatory he says: It was considered that the marsh lands would cost as much as they were worth to fill them up; there was abundant room for the commerce without them.

8th. To the eighth interrogatory he says: Don't recollect any sales.

9th. To the ninth interrogatory he says: Answered in his answer to the seventh.

11. To the 11th interrogatory he says: Having no property in that part of the city, or any similar property to improve any where, he has no knowledge on the subject; has no knowledge of the cost of wharves; a wharf will last in proportion to the durability of the material of which it is constructed; Kennedy's wharf commenced on the east side of Water street, and Water street from Liverpool wharf was subsequently filled up so that drays could reach.

12th. To the twelfth interrogatory he says: Union press was built subsequently; does not recollect when.

13th. To the thirteenth interrogatory he says: The only improvement on either side of Water street, above St. Michael street, in 1829 and '30, was Gordon's press, so far as this deponent recollects.

14th. To the fourteenth interrogatory he says: Don't know.

15th. To the 15th interrogatory he says: Don't know.

16th. To the sixteenth interrogatory he says: Don't recollect.

17th. To the 17th interrogatory he says: It is very notorious that there was, in 1829 and '30, a very strong down town interest arrayed against up town property, the leaders of which may have had much capital of their own, but they also had the influence and control of the

banking capital of the city, and deponent has no doubt they used it, but with what success the constant growth up town of the city must testify.

18th. To the eighteenth interrogatory he says: Some years prior to 1829 and 1830 the lot where Union press now is was bought by the down town party for the avowed purpose of stopping the growth of the city in that direction.

19th. To the nineteenth interrogatory he says: Don't recollect.

20. To the twentieth interrogatory he says: Does not know of any.

21. To the twenty-first interrogatory he says: Don't recollect; Liverpool wharf was built prior to 1829, and Gordon's Cotton press in 1829 or 1830.

22d. To the twenty-second interrogatory he says: In 1828 deponent said and wrote that less than 25 years Mobile would receive over four hundred thousand bales cotton.

23d. To the twenty-third interrogatory he says: In 1829 and '30 some of deponent's tenants left his premises because they were assured by the President of the United States Branch Bank in Mobile that if they moved into his premises they should have bank facilities; and it is well known that Tho. W. Niles, A. H. Garrow, and James Taylor, influential men in their day, did move.

24. To the twenty-fourth interrogatory he says: The Union press, and Gordon's press, seems a great way off only to the limited vision of the down town party.

25th. To the twenty-fifth interrogatory he says: Answered in reply to the 7th.

26th. To the twenty-sixth interrogatory he says: All who know any thing about the interior of the State believed Mobile would become a commercial city of importance.

27th. To the twenty-seventh interrogatory he says: All he knows is that taxes are very high.

28th. To the twenty-eighth interrogatory he says: Was not at the sales made by J. Inerarity.

29. To the twenty-ninth interrogatory he says: It was said the Orange Grove was bought by the down town party to stop the growth of [the] place.

30. To the thirtieth interrogatory he says: Was asked to become a party if the purchase was made by Mr. Jones and others, and agreed to become one; was sick and did not attend the sale, or did he hear Mr. Kennedy express any opinion.

31st. To the thirty-first interrogatory he says: Did not.

32d. To the thirty-second he says: Don't know.

33d. To the thirty-third he says: Don't recollect.

34. To the thirty fourth [he] says: Has no personal knowledge of the matter.

35. To the thirty-fifth interrogatory he says: Don't know.

36. To the thirty-sixth interrogatory he says: Don't know.

37. To the thirty-seventh interrogatory he says: Don't know.

38. To the thirty-eighth interrogatory he says: Don't know.
39. To the thirty-ninth interrogatory he says: Don't know.
40. To the fortieth interrogatory he says: Don't know.
41. To the forty-first interrogatory he says: He knows nothing more.

Cross interrogatories.

1st. To the first cross interrogatory he says: John Forbes & Co. was in possession of said lands; did not offer to sell to deponent.

2d. To the second cross interrogatory he says: Knows nothing of this matter.

3d. To the third cross interrogatory he says: Never purchased any lands above St. Louis street.

4th. To the fourth cross interrogatory he says: His business seems to be in taking care of property in his possession, &c.; seldom saw him, and knew but little of his employment.

JOSEPH E. SHEFFIELD.

Gordon's testimony.

Answers of A. W. Gordon to the interrogatories and cross interrogatories hereto appended. The said witness being duly sworn, on this the 19th day of April, A. D. 1845, deposes and says:

1. To the first interrogatory: Was acquainted with the lands in question in 1829 –'30; it was then a marsh, entirely overflowed by water at high tides; its value then was altogether speculative; it could only be made useful or valuable by the expenditure of large sums of money in raising or filling it up to prepare it to build on. The whole tract he should not suppose worth more than ten or twelve thousand dollars at that time, the half in that proportion.

2d. To the second interrogatory: He can not say; it is a large tract of land, and has now costly and heavy improvements on a part of it.

3d. To the third interrogatory: He has no way of forming an opinion of its value, and cannot say what it is worth.

4th. To the fourth interrogatory: He cannot say; there are large and extensive improvements on it with which he is not sufficiently acquainted to enable him to estimate its value.

5th. To the fifth interrogatory he says: Lands were usually sold on a credit of one, two, and three years, from 1830 to 1840. Some sales were ¼ cash, and balance one, two, and three, and four years, and some again on still longer credits.

6th. To the sixth interrogatory: Thinks if sales of lands had been made for cash, in place of the usual credits given from 1830 to 1840, that prices would have fallen one half or perhaps ⅔.

7th. To the seventh interrogatory: The value of these lands at that time was entirely speculative and prospective; they could not be considered as possessing a definite or fixed value; no two men would probably agree in valuing them.

8th. To the eighth interrogatory: Do not recollect of any sales of

marsh grounds north of St. Louis street previous to the sale of Orange [Grove.]

9th. To the 9th interrogatory: The property was not in a situation, from the sunken marshy state, to be laid off into lots, or if it had been he thinks there would have been no purchasers. The purchaser of a lot in the centre or towards the river must have filled or raised a way or track to his lot for the purpose of filling it; this would have been so expensive as to have deterred any one from purchasing.

11th. To the eleventh interrogatory: Wharves are so valuable in size, and not knowing the dimensions of Mr. Kennedy's, cannot say what they cost; should suppose the average expense for keeping in repair per annum for wharves may be 10 per cent.; thinks Kennedy's wharf commenced east of Water street as now located; it was connected with the land by a raised passage to it; does not know how many feet it extended into the river.

12th. To the twelfth interrogatory: The Union press was built in 1831, and about the same time Water street was made as far as St. Louis street; Jones's wharf commenced some distance east of Water street; does not know the length or breadth of it; it was located some distance south of St. Louis street; does not know the extent of the Union press.

13th. To the thirteenth interrogatory: Horse cotton presses and cotton sheds occupied the grounds south of the Union press to St. Michael street on the west side of Water street; east of Water street, on the Commerce street part, was a row of 3 story buildings; on the Water street parts were two 2 story buildings, and between them were cotton sheds, all of brick, extending from Jones's line to St. Michael street; east of Commerce street was Liverpool wharf, and a dock on the north side between it and Jones's wharf; between Water and Commerce streets, from Jones's line to Liverpool wharf, the marsh was filled up in 1827 or 1828.

14th. To the fourteenth interrogatory: See answer to the 13th.

15th. To the fifteenth interrogatory: Liverpool wharf was filled up with earth by S. Sewell, he thinks, in 1822; from Water street to some point east of Commerce street about 50 or 60 feet wide. This property from Water street to the channel of the river was sold to J. B. Leavens for the sum of one hundred thousand dollars, on a ten year's credit, without interest.

16th. To the sixteenth interrogatory: The property sold to Latham Mitchell by witness, had a front on Water street of 130 feet, and a front on St. Michael street of 200 feet. The improvements on it were two horse cotton presses and cotton sheds of brick. The price was $45,000, on a ten year's credit, without interest.

17th. To the seventeenth interrogatory: There was a strong feeling existing at this time among the down town property holders against those holding property up town, and the influence of all their capital, &c., &c., was concentrated and brought to bear, and was very sensibly felt by the up town interest.

18th. To the eighteenth interrogatory: Believes there was many who at this time thought that the town would not extend north of St. Louis street, at least for very many years to come; has understood that the lot on the south side of St. Louis street, from Royal street to the river, was purchased by some down town gentlemen with a view of giving a northern limit to the city, and that they gave then for it what was considered an extravagant price.

19th. To the nineteenth interrogatory: Has understood that the corporation claimed all the marsh north of St. Louis street to high water mark, under the act of Congress of 1824, and they sued Mr. Kennedy for it. Opinion was very much divided as to the validity of their claim; witness did not think it valid.

20th. To the twentieth interrogatory: Mr. Kennedy bought the corporation claim to a strip of marsh 60 or 70 feet wide, between St. Michael and St. Louis streets. He believes there was other compromises made with the corporation; does not recollect by whom.

21st. To the twenty-first interrogatory: The buildings before described as having been sold to Leavens, east of Water street, he thinks was the most northerly building in 1830. Commerce street was not then opened all the way; some parts of it were filled up; it was contemplated then it should be opened. Cotton was then landed between St. Michael and Government streets, and was stored within the same limits; steamboats also laid within those limits; business was mostly transacted in Commerce and Water streets, between Government and St. Michael, and in the streets crossing them; the most northerly dry-goods store in Water street was near St. Francis street; does not know how many bales of cotton were received at that time.

22d. To the twenty-second interrogatory: The progress of the city north since this time has been steady, and its tendency that way has increased yearly. There was many speculations entertained at this time as to the amount of cotton that would ultimately be received in Mobile; 500,000 bales was then deemed an extravagant estimate.

23d. To the twenty-third interrogatory: Improved property up town had not a preference then as it has now; it was difficult to get good tenants for buildings or to keep them; they would move lower down and pay higher rents; some of the tenements of witness were unoccupied for a year or two; he had even offered them free of rent without getting occupants.

24th. To the twenty-fourth interrogatory: Union press was not built in 1830.

25th. To the twenty-fifth interrogatory: The improved part of the city afforded plenty of room for the transactions of all business that was then done here; the preference for building locations was down town.

26th. To the twenty-sixth interrogatory: Developments were such at this time as to satisfy the reflecting part of the community that Mobile was destined to become even at an early day a city of large commercial importance.

27th. To the twenty-seventh interrogatory: City property he thinks has been generally assessed far above its cash value; in some cases to 3 or 4 times its value.

28th. To the twenty-eighth interrogatory: He was present at the sale by Mr. Innerarity of the Orange Grove; there was only two companies who bid; it was knocked down to John Bloodgood, of the down town company, for $40,000 dollars, it being the best bid.

29th. To the 29th interrogatory: The company who purchased was composed of down town gentlemen; he heard it said at the time that their intention was to let it lie, or not bring it into market for sale, and by this course prevent the town from extending further up stream. Witness does not know their views in this regard himself.

30th. To the thirtieth interrogatory: There was a company also up town, with a view to purchase the Orange Grove, who bid at the sale to within $200 dollars of the price it sold for. Joshua Kennedy was one of this company; this company had no fixed, or agreed or limit to which they would go; they expected to buy from $25,000 to $30,000 dollars. Mr. Innerarity bid for this company, that is, after he had done bidding for himself. Innerarity's limit was $25,000 dollars.

31st. To the thirty-first interrogatory: Does not know of such member, but heard it said at the time that T. P. Norris, esq., relinquished his interest. It was also said others gave up their interest; does not know their names.

32d. To the thirty-second interrogatory: The sale of the Orange Grove property, and the increasing commerce of the place, Indian treaties also, probably had an influence.

33d. To the thirty-third interrogatory: Property commenced rising soon after this sale, and continued to rise until 1836, when it was at the highest point.

34th. To the thirty-fourth interrogatory: The Orange Grove company had two, or perhaps more sales; many persons became purchasers, for large amounts, (that is, on paper,) were sold.

35th. To the thirty-fifth interrogatory: He should say about 1837.

36th. To the thirty-sixth interrogatory: Redwood's foundry on Water and St. Anthony streets; also another building by J. Kennedy, a little south of the above, on Water street.

37th. To the thirty-seventh interrogatory: Is not able to name a point, not knowing the streets.

38th. To the thirty-eighth interrogatory: There are four steam cotton presses; does not know how many warehouses; can't answer the other questions in this interrogatory.

39th. To the thirty-ninth interrogatory: Thinks the improvements in this section of the city in warehouses and cotton presses have been too much extended.

40th. To the fortieth interrogatory: About the year 1835 or 1836.

41st. To the forty-first interrogatory: Knows nothing further.

A. W. GORDON.

Cross interrogatories.

To the first cross interrogatory: Supposed that either Dr. W. E. Kennedy or Joshua Kennedy, or perhaps both, were the owners of the land or marsh in question. Dr. W. E. Kennedy proposed to sell it to witness in 1823 or 1824; thinks it was the marsh ground he proposed to sell me (was bounded south by St. Louis street, west by Royal street, north by the Orange Grove, and east by the river) for the sum of $1,500, *dollars*.

To the 2d cross interrogatory: Was not acquainted with George or Sidney E. Collins, might have seen them when they were boys; knows nothing of the circumstances attending the sale or purchase of the land in question; does not know what Kennedy said to Collins regarding their title, nor of the value of the land; recollects Mr. Kennedy told witness that he had bought out Collins's title to this land, that he had given too much for it, as the title was not good, but that he wished it settled, or something to that effect, as it clashed with other titles or grants, none of which was then settled or perfected.

To the 3d cross interrogatory: Never bought land on St. Louis street.

To the 4th cross interrogatory: Mr. Kennedy appeared to be employed a good deal of his time in attending to his land titles, or Spanish, and probably other grants, in getting them perfected; he was considered to be well skilled in all matters having regard to land titles, and to grants for lands; he was also owner of some mills in Baldwin county, to which a portion of his time was devoted.

To the 5th cross interrogatory: Is not aware that he knows any thing, by way of explanation, that would be material to any of the parties. If particular questions were put specifically, witness would be able to say yea or nay to them.

A. W. GORDON.

Interrogatories to be submitted to Cornelius Rain, a witness for the defendants in a certain cause pending in the United States circuit court at Mobile, in which Sidney E. Collins is plaintiff, and William R. Hallett and Robert L. Walker, executors of Joshua Kennedy, the heirs of Joshua Kennedy, the Branch Bank of Mobile, and others, are defendants.

1. Were you acquainted with William E. Kennedy in his lifetime?

2. Are you acquainted with a certain piece of land in the upper part of the city of Mobile, lying east of Royal street, and between St. Louis and the Orange Grove; did William E. Kennedy claim that land as his property?

3. Please state what you know of a controversy concerning said land between William E. Kennedy and any party seeking to subject it as the property of the estate of Joseph E. Collins; what occurred on that occasion; was it admitted to be the property of Collins's estate, or was that right denied; what agency had you in that controversy; what did

you do, and on whose account; did William E. Kennedy claim it as his own or not?

4. If you know any thing material to the matters in issue or dispute between the parties, or to the subject of the suit, or to the matters of evidence about which you have been interrogated, set forth the same fully and at large in your answer.

STEWART & EASTON,
For Defendants.

Filed February 21st, 1845.

JOHN FITTS, *Clerk.*

Cross interrogatories to be submitted to Cornelius Rain, a witness for the defendants, in a cause pending in the circuit court of the United States, for the southern district of Alabama, in which Sidney E. Collins is plaintiff, and William R. Hallett and Robert L. Walker, executors of the last will and testament of Joshua Kennedy, deceased, and others, are defendants.

1. If you answer the 3d interrogatory in the affirmative, please state when the controversy occurred to which the interrogatory relates; who was present with you; did Joshua Kennedy have any thing to say or to do in the matter? Please state what was said or done by him, and who was present.

2. If you know anything material for the plaintiff, or to the matters in dispute between the parties, answer to the same.

CAMPBELL & CHANDLER,
For Plaintiff.

Filed March 3d, 1845.

JOHN FITTS, *Clerk.*

Rain's testimony.

Cornelius Rain being produced before me, on this the 11th day of March, A. D. 1845, and being duly sworn, deposes and says, in answer to the annexed interrogatories and cross interrogatories, as follows, viz:

To the 1st interrogatory he answers: That he was well acquainted with William E. Kennedy in his lifetime.

To the 2d interrogatory he answers: That he is acquainted with the location of the land described in this interrogatory, and knows that the said William E. Kennedy claimed it as his property.

To the 3d interrogatory he answers: That in the year 1818 there was some controversy between James Innerarity and the said William E. Kennedy about said land, the particulars of which the witness does not recollect. But the witness was then living with John Elliott, esq., who was the attorney of William E. Kennedy, and at the request of said Elliott the witness did deliver to Daniel Duvall, then sheriff of Mobile county, a notice, a copy of which is hereto annexed; that the annexed copy is in the handwriting of said John Elliott, and the signature of the witness to the certificate on the back thereof is genuine, and was made by the witness at the time of serving said notice. The witness remembers serving the notice and returning the copy to John El-

liott, but could not state the exact date of this transaction from memory alone; this is all the witness can now recall of the controversy.

To the 4th interrogatory he answers: That he has stated all he knows of the matter.

Cross interrogatories.

To the 1st cross interrogatory he answers: That to the best of his knowledge and belief the controversy he has alluded to occurred in the year 1818; that he does not think any person was present when he delivered the said notice to Daniel Duvall; nor does he remember that any one was present when Elliott gave the notice to the witness, and requested him to serve it; that witness does not know of Joshua Kennedy's having any thing to do with the transaction spoken of.

To the 2d cross interrogatory he answers: That he knows nothing more than he has already stated.

C. RAIN.

MOBILE, *February 24th*, 1818.

SIR: Having understood that you had, or was about to levy an execution, issued from the superior court of Mobile county, in the case of John Forbes & Co. vs. Benjamin Lanier, executor of the goods and chattels, rights and credits, which were of Joseph Collins, deceased, on a certain lot of land, situated at the north end of Royal street, in the town of Mobile, containing fifty perches in front, on the northeast side of said Royal street, and extending eastwardly to Mobile river, bounded on the north by lands said to belong to John Forbes & Co., on the west by Royal street aforesaid, on the south by St. John street, and on the east by Mobile river, I take this method to exhibit the sale of the premises aforementioned, and hereby notify and forewarn you that, if you proceed to make said sale, you will proceed at your own peril: the indefeasible right and title, in fee simple, to the tract of land aforementioned, having been regularly conveyed to me by Alexander Baudain, to whom the same legally appertained, and vested in me, my heirs and assigns, forever.

I am, sir, respectfully, your obedient humble servant,

Signed, WM. E. KENNEDY.

To DANIEL DUVALL, Esqr.,
Sheriff of Mobile county.

MOBILE, *February 24th*, 1818.

I do hereby certify, that the within and aforegoing is a true copy from the original letter which I this day delivered to Daniel Duvall, esq., sheriff of Mobile county.

C. RAIN.

THE STATE OF ALABAMA, *Mobile county*:

Now I, Sidney T. Douglass, one of the commissioners named in the annexed commission, do hereby certify, that the witnesses, Margarete Lewis, Rachel Moore, William M. Garrow, Michael Portier, William

Jones, jr., A. W. Gordon, Joseph E. Sheffield, and Cornelius Rain, did appear before me at the times and places specified by me in the caption to their respective depositions; that they being first duly sworn upon the holy evangelists of Almighty God, did depose as above set forth.

And I do further certify, that I reduced their answers to the respective interrogatories and cross interrogatories to writing in their presence; and, after so doing, I read over the answers of each witness carefully to them, and they assented to the correctness of same, and subscribed their name to their respective depositions in my presence.

In testimony whereof, I hereunto set my hand and seal, at Mobile, April the 19th, A. D. 1845.

SIDNEY T. DOUGLASS, [SEAL.]
Commissioner

Open 5th January, 1846, by consent.

SYDNEY E. COLLINS,
vs.
THE HEIRS OF JOSHUA KENNEDY, et al.

United States circuit court.

Interrogatories to be exhibited to Jonathan Emanuel [and] Wm. Jones, jr.

Interrogatories to be exhibited to witnesses on behalf of the respondent, the Branch of the *Branch of the* Bank of the State of Alabama, at Mobile.

Interrogatories to Jonathan Emanuel and William Jones, jr.

1sl. Do you know the three lots now possessed and claimed by the Branch Bank at Mobile; that is to say, 100 feet square on northeast corner of St. Louis and Water streets; 100 feet square on the northwest corner of St. Anthony and Water streets; and the lot on the northeast corner of St. Anthony and Water streets, having a front of 100 feet on Water street, by 104 feet on St. Anthony street?

2d. If you answer yea to the first interrogatory, state who was in possession thereof previous to the year 1836, and who was in possession after that time; and did not the persons then in possession claim title in the premises?

3d. Was not William F. Cleveland in possession of a portion of the premises, claiming title therein previous to the 25th March, 1842; and was he not thus in possession on the 9th January, 1838, and on the 10th April, 1837; if so, can you state what portion of the premises?

4th. Was not James Campbell in possession, claiming title, on the 13th January, 1836, on the 10th April, 1837, and on the 26th February, 1842, and the 19th March, 1844; if so, can you state what portion of the premises he was then in possession of?

Interrogatories for H. B. Holcombe, T. L. Toulmin, H. Donaldson.

Interrogatories to H. B. Holcombe, Theophilus L. Toulmin, H. Donaldson.

1st. State what office you hold in the Branch Bank at Mobile, and how long you have been connected with the institution.

2d. Do you know the lots described in the direct of the foregoing interrogatories; if so, from whom did said bank acquire the property?

3d. Do you know the consideration paid for the property? If so, please set it forth at length, to whom it was paid, and when, and whether the aggregate is not a full and adequate price for the property.

4th. Please say what original deeds are in the possession of, and under the control of the Bank, relative to the title to said property.

5th. Were the grantors in the several deeds to the bank in possession of the several portions *thus* purport to have conveyed at the time they made said conveyance, and did they claim title in the premises?

Interrogatories exhibited to Adolph Batre.

Interrogatories to Adolph Batre.

1st. Do you know the premises described in the first of the foregoing interrogatories? If so, state whether you were ever in possession of the same, or any portion thereof; when you were so in possession; from whom you acquired the premises, and for what consideration; whether *whether* such consideration was ever paid; and whether, at the time, it was not a fair price for the property. State fully.

2d. How long did you retain possession, and was not your possession under a claim of title; to whom did you sell the property, and when, and for how much; and has said consideration been paid?

3d. Who was in possession of the property in 1836, and in each of the following years, up to 1844 respectively?

General interrogatories to all witnesses.

4th. Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If so, set forth the same fully and at large.

LINDSAY & FOX,
Solicitors for Bank.

Notice waived. Commissioners of the plaintiff, P. and T. Hamilton, or either of them, to act without commission.

CAMPBELL & CHANDLER,
For Plaintiff.

Commission waived.

SYDNEY E. COLLINS, plaintiff,
vs.
THE HEIRS OF *of* JOSHUA KENNEDY, BRANCH BANK et al., defendants.

In this cause, pending in the circuit court of the United States, sitting at Mobile, it having been agreed between the parties that the wit-

nesses for the defendant, the Branch of the Bank of the State of Alabama, at Mobile, should be examined without commission, I, Thomas A. Hamilton, a commissioner agreed upon to examine said witness, caused Jonathan Emanuel, one of said witnesses, to come before me at my office, in the city of Mobile, on the twelfth day of April, A. D. 1845; and the said Emanuel having been first duly sworn by me, did depose and testify as follows:

J. Emanuel's testimony.

To the 1st interrogatory he answers and says: He knows the property at the northeast corner of St. Louis and Water streets; he also knows the property, both on the northeast and northwest corners of St. Anthony and Water streets, but does not know the dimensions of the lots on those corners; deponent says he believes the Branch Bank at Mobile is now in possession of said three lots, but he cannot say positively; somebody is in possession from Campbell and Cleveland, and under their titles.

To the 2d interrogatory deponent says: Previous to 1836 said three lots were owned and claimed by Joshua Kennedy, who was also in possession; since that time, James Campbell and Wm. F. Cleveland, and those claiming under them, have owned and claimed said lots, and have been in possession of the same.

To the third interrogatory deponent says: He thinks Wm. F. Cleveland and James Campbell went into and continued in possession of said three lots jointly, claiming title together; deponent thinks said Campbell and Cleveland purchased said lots from Kennedy, about the year 1836, and went into possession about that time, and continued so until William F. Cleveland conveyed his interest to the bank.

To the 4th interrogatory deponent says: He thinks James Campbell was in possession of said property jointly with Wm. F. Cleveland until the time of Cleveland's transfer to the bank; subsequently to that transfer to the bank, and some time last year (1844) deponent has understood Mr. Campbell made some arrangement with the bank, by which he gave up his interest in said three lots, and took in lieu thereof some other property.

To the general interrogatory deponent says: He is not aware that he knows any thing further at all material to either party in this suit.

J. EMANUEL.

Sworn to and subscribed before me, this 12th day of April, A. D. 1845.

THOS. A. HAMILTON, *Commissioner.*

A. Batre's testimony.

I caused Adolph Batre, one of the witnesses, to come before me, at his office in the city of Mobile, on the 12th day of April, A. D. 1845, and the said witness having been by me first duly sworn, did testify and depose as follows:

To the 1st interrogatory he answers and says: He does know the three lots referred to, viz., one on the corner of Water and St. Louis

streets, and two on the corners of St. Anthony and Water streets; deponent says he was once in possession of the lots on the northeast and northwest corners of St. Anthony and Water streets. Deponent purchased said lots in the year 1831, and there was no contest as to his right to the immediate possession. Deponent continued in possession until the year 1833, when he sold to Wm. F. Cleveland, and gave him a deed which he believes was for Wm. F. Cleveland and James Campbell's benefit. Deponent purchased the property from Joseph Krebbs through a quit claim deed with M. D. Eslava, and the consideration given and actually paid was, he thinks, about four thousand two hundred dollars, and deponent thought it a fair price at that time for the property.

To the 2d interrogatory deponent says: He continued in possession until he sold as already stated, and his possession was always under a quit claim title; deponent has already stated when and to whom he sold the property; he sold it for five thousand five hundred dollars, which were actually paid by the purchasers.

To the third interrogatory deponent says: He thinks that in 1836 Campbell and Cleveland were in possession of said property on the corners of St. Anthony and Water streets. To the rest of this interrogatory deponent says: He did not hear of any change of the possession of said property until he heard of the Branch Bank having bought the same; deponent does not know in what year the bank purchased.

To the 4th interrogatory deponent says: He is not aware of that he knows any thing further, likely to benefit either party in this suit.

A. BATRE, *Witness*.

Subscribed and sworn to before me, this 12th day of April, A. D. 1845. THOS. A. HAMILTON,
Commissioner.

Wm. Jones, jr.

I caused William Jones, jr., one of the witnesses, to come before me, at the office of said P. & T. Hamilton in the city of Mobile, on the 18th day of April, A. D. 1845, and the said Jones having been duly sworn, did testify and depose as follows:

To the 1st interrogatory witness answers and says: He knows the three lots inquired about in this interrogatory.

To the 2d interrogatory witness answers: The lot on the corner of St. Louis and Water streets referred to was in the possession of Joshua Kennedy for many years previous to 1836; after that time James Campbell and Wm. F Cleveland were in possession of said lot until Wm. F. Cleveland sold his interest in the same to the Branch Bank at Mobile, about the year 1842 as witness thinks; in 1836, and for some time previous, James Campbell and Wm. F. Cleveland were in possession of the two lots named on the corner of Water and St. Anthony streets; witness does not recollect for how long a time previous to 1836 said Campbell and Cleveland were in possession of said two lots; before said Campbell and Cleveland witness thinks Joshua Kennedy and Jacques Chigizola were in possession of said property, but he is not positive; af-

ter 1836 Campbell and Cleveland were in possession of these two lots until the time of Cleveland's transfer to the bank; since that time both Campbell and the bank have had some interest in said first named two lots; witness says the possession of all three of the lots named in the first interrogatory was always held under claim of title by all the persons he has named as having been in the possession of said lots, or any of them.

To the third interrogatory witness says: He thinks William F. Cleveland and James Campbell were in possession, together, of all three of the lots, claiming title thereto on the 10 April, 1837, and on the 9th January, 1838, and previous to the 28th March, 1842.

To the 4th interrogatory witness says: He thinks Wm. F. Cleveland and James Campbell were in possession, together, of all three of the lots named, on the 16th April, 1837, and on the 26 February, 1842; thinks they were in possession, together, of the two lots on St. Anthony street, on the 13th January, 1836, and thinks on the 19 March, 1844, James Campbell was still in possession of his part of all three lots, said Cleveland having before that time transferred his interest to the Branch Bank; witness cannot say what particular portions of said premises said Campbell may have been in possession of under any agreement with Wm. F. Cleveland; they were interested together, and had a joint possession, as deponent thinks; there was a partition of the property between the Branch Bank and Mr. Campbell some time in 1844, under which witness thinks said Campbell took as his share the property on the east side of Commerce, on St. Anthony, to the channel of the river, and also the lots on St. Anthony street, fronting on the west side of Commerce street; the bank took the rest of the property; Mr. Campbell went into exclusive possession, as witness thinks, of his part of said property from the time of partition.

WM. JONES, Jr.

Sworn to and subscribed before me, this 18th day of April, A. D. 1845. THOMAS A. HAMILTON,
Commissioner.

H. R. Holcombe's testimony.

I caused Henry B. Halcombe, one of the witnesses to be examined, to come before me at the office of the said Holcombe in the banking house of the Branch of the Bank of the State of Alabama, at Mobile, on the 28th day of April, A. D. 1845, in the city of Mobile; and the said Holcombe having been by me first duly sworn, did testify and depose as follows:

To the first interrogatory he answers and says: He fills the office of cashier to the Branch of the Bank of the State of Alabama at Mobile, and has filled it since the 24th May, 1843.

To the second interrogatory he answers and says: He has only a general knowledge of the three lots as described in the first interrogatory, their location and boundaries, &c.; the bank acquired the property and holds it by virtue of sundry purchases and deeds from Wm. R. Hallett,

executor of Joshua Kennedy, deceased, James Campbell, and Wm F. Cleveland, Campbell and Cleveland, Cleveland and Huggins, the master in chancery at Mobile, and Theophilus L. Toulmin; the chain of title back to Joshua Kennedy in 1836 is as set forth in the abstract of the title appended to the answer of the bank on file in this cause.

To the third interrogatory witness answers and says: The consideration paid for the property was as set forth in the deeds before referred to, that is to say—first, the sum of seven thousand five hundred and twenty-four $\frac{99}{100}$ ($7,524 $\frac{99}{100}$) dollars paid to Wm. R. Hallett, executor, 2d May, 1842, for the assignment of the morigage from James Campbell and William F. Cleveland to Joshua Kennedy, to secure the original purchase money, dated 13th January, 1836; secondly, the sum of ten thousand five hundred and fifty dollars paid to M. J. McRae, master in chancery, on the 7th December, 1840; thirdly, the cancelling and releasing of sundry notes and debts of Wm. F. Cleveland, amounting to the aggregate of about the sum of two hundred thousand dollars, including interest and protests, which notes and debts were thus liquidated on the 28th March, 1842, and which had been previously secured by two mortgages to the bank on the premises, one from Wm. F. Cleveland and George Huggins, dated 10th day of April, 1837, and the other from the same parties, dated 9th January, 1838; a copy of which said release is hereto appended, and now marked exhibit A; fourthly, a release or quit claim to James Campbell to all the bank's undivided interest in the whole premises, covered by any of the before mentioned deeds, excepting the three lots before described, made 19th March, 1844; said considerations were passed and the payments made as above set forth; the aggregate amount of consideration paid for the property was over its value, as deponent believes.

To the fourth interrogatory witness says: The bank has in its possession the following original deeds, and none other, relating to the title of the property: 1st. James Campbell and Wm. F. Cleveland's mortgage to Joshua Kennedy, to secure the payment of thirty-one thousand nine hundred and fifty dollars, dated 13th January, 1836. 2d. A mortgage from James Campbell to the Branch Bank at Mobile, to secure the payment of thirty-five thousand eight hundred and ninety-one $\frac{51}{100}$ dollars, dated April 10, 1837. 3d. A mortgage from Wm. F. Cleveland and George Huggins to the Branch Bank at Mobile, to secure the payment of one hundred and sixty-six thousand four hundred and fifty-six $\frac{10}{100}$ dollars, dated April 10, 1837. 4th. William F. Cleveland and George Huggins' mortgage to the Branch Bank at Mobile, to secure the payment of one hundred and seventy-four thousand three hundred and seventy-eight $\frac{88}{100}$ dollars, dated 9th January, 1838. 5th. M. J. McRae, register and master in chancery, to the Branch of the Bank of the State of Alabama at Mobile, dated December 7, 1840. 6th. James Campbell to Theophilus L. Toulmin, dated 26th February, 1842. 7th. W. F. Cleveland to the Branch Bank of Mobile, dated March 28, 1842. 8th. Wm. F. Cleveland and Miranda, his wife, to the Branch Bank at Mobile, dated 26th February, 1844. 9th. Deed of partition

between James Campbell and the Branch Bank at Mobile, dated 19th March, 1844.

To the fifth interrogatory witness answers and says: He believes that the grantors at the time were understood to be in possession of the several interests conveyed to the Branch Bank at Mobile, and claimed title to the same, and proposed to sell and convey in pursuance thereof, claiming title under Joshua Kennedy; the grantors, as deponent believes, were in possession at the time of the conveyances aforesaid; deponent cannot state positively that such was the case, but, so far as he knows, it was the general belief and understanding that the title was made complete; so far as deponent knows, every one claiming title to the three lots described, except the complainant in this suit, has conveyed to the bank for a full and adequate consideration, which has been paid; deponent has no knowledge that any notice of the complainants' claim was in the possession of the bank at the time the conveyances were made; nor does he find any record evidence of such notice on the books of the bank.

To the sixth interrogatory he answers: He is not aware that he knows any thing more which is material in this cause.

HENRY B. HOLCOMBE.

Subscribed and sworn to before me, this 28th day of April, A. D. 1845. THOMAS A. HAMILTON, *Commissioner*.

Commissioner's certificate.

In this cause, it having been agreed by and between the parties that the testimony of the witnesses, Jonathan Emanuel, William Jones, jr., H. B. Holcombe, Theophilus L. Toulmin, H. Donaldson, and Adolph Batré, should be taken on behalf of the Branch of the Bank of the State of Alabama at Mobile, without a commission issuing from the court, and it having been further agreed that Peter Hamilton and myself, or either of us, should act as commissioners to take said testimony; now therefore, I, Thomas A. Hamilton, one of the commissioners, acting by consent as aforesaid, do hereby certify, that the witnesses, Jonathan Emanuel, William Jones, junior, Henry B. Holcombe, and Adolph Batre, came before me at the times and places hereinbefore respectively named; that each of said witnesses was first duly sworn by me, and that each of them testified as it is set down over his own signature. I further certify, that the testimony of all of said witnesses was by me reduced to writing, and that each of them subscribed his own testimony in my presence, after its having been first read over to him by me. I further certify, that the defendant, the Branch of the Bank of the State of Alabama at Mobile, waived the examination (by their counsel) of the witnesses H. Donaldson and Theophilus L. Toulmin, who were therefore not examined by me. I further certify, that I am not of counsel or attorney in this case, nor in any way interested in the event of this suit.

THOS. A. HAMILTON, [SEAL.]
Commissioner.

Commissioner's fee $20. Paid by Branch Bank.
THOS. A. HAMILTON.

Exhibit A to the testimony of H. B. Holcombe.

THOS. A. HAMILTON, [SEAL.]
Commissioner.

STATE OF ALABAMA, *Mobile county:*

Know all men by these presents: The Branch of the Bank of the State of Alabama at Mobile, a corporation situated at Mobile, for and in consideration of a deed in fee of certain real estate described therein, executed by Wm. F. Cleveland, of said county, to said corporation, bearing even date with these presents, and in consideration of the covenants and agreements contained therein, the Branch of the Bank of the State of Alabama at Mobile doth hereby remise and release to said Wm. F. Cleveland all demands and debts said corporation has and holds against said Cleveland, of all kinds and descriptions whatsoever, due and owing, either by judgment, mortgage, bond, bill, or note, or account, except such debts as said Cleveland is owing to said corporation as endorser or security of James Campbell; and also in consideration thereof, and in pursuance of the provisions herein contained, the said Branch of the Bank of the State of Alabama at Mobile do hereby release and dismiss all debts due and owing said bank by the late firm of Cleveland and Huggins, which firm was composed of William F. Cleveland and George Huggins, whether the same is due by mortgage, deed, bond, judgment, or bill, or note, or account, of all kinds and descriptions whatsoever; and further, the said Branch Bank at Mobile doth hereby acknowledge the receipt of all the collateral securities by said William F. Cleveland received of Jeremiah Anstill, indemnifying said Cleveland as endorser of said Anstill to said Branch Bank; and further, the said Branch of the Bank of the State of Alabama at Mobile do hereby covenant and agree, with said Wm. F. Cleveland, that the mortgages executed by said Cleveland and Huggins, and described in said deed, bearing even date with these presents, are to be held by said bank only as evidences of title to the premises described in said deed; and that said Branch Bank, by virtue thereof, will never exert the same by way of claiming any debt mentioned therein, nor put up any to any of the real estate described in the deed of this date to said bank from said Cleveland.

In testimony whereof said corporation have caused its seal to be hereunto affixed, and signed by the president *of* thereof, to express its assent to this act, this the 28th day of March, 1842.

C. M. GODBOLD, [SEAL.]
Pro Tem.

STATE OF ALABAMA,
And Mobile county:

Personally appeared before me, J. W. Lang, a notary public, duly commissioned and sworn, and dwelling in the said city of Mobile, the within named C. M. Godbold, president pro tem. of the Branch of the Bank of the State of Alabama, at Mobile, who acknowledged that he

signed and sealed the foregoing deed of release to Wm. F. Cleveland, on the day and year therein mentioned, and for the uses and purposes therein mentioned. Given under my hand and seal of office the thirtieth day of March, A. D. 1842.

Signed J. W. LANG,
N. P. Br. Bank Alabama, at Mobile.

Which said deed is endorsed on its back,

Received in office for record, March 30, 1842.

Signed D. THOMPSON, *Clerk.* [SEAL.]

Recorded in book Miscellaneous D, pages 317 and 318.

Signed D. THOMPSON, *Clerk.*

Commission to McRae and Rhodes, commissioners to examine Louis A. Cullovatt, Benjamin Gooden, Allen Gooden, Catharine Goodin, John Haven, Jacob Burgen, Mary Burgen, et al.

UNITED STATES OF AMERICA,
Southern district of Alabama:

Circuit court of the United States, for the fifth judicial circuit and southern district of Alabama.

SIDNEY E. COLLINS,
vs.
HALLITT & WALKER, executors, et al. } In chancery.

To Rufus Rhodes and Charles McRae, esquires, greeting:

Whereas in a certain cause now pending in said court, wherein Sidney E. Collins is plaintiff, and William R. Hallitt and Robert L. Walker, executors of the last will and testament of Joshua Kennedy, deceased, John H. Hastie and Secluda, his wife, Augustus R. Meslier and Mary, his wife, John G. Aikin and Clarissa, his wife, Joshua Kennedy, Augusta Kennedy, et al., are defendants, an order has been made by the hon. William Crawford, judge of said court, extending the time to the parties to the said cause to take testimony in the same until the first day of October next; and whereas he has further ordered that commissions may be issued for taking further testimony to any of the commissioners who have been named in any of the commissions heretofore issued in this cause; now, therefore, know ye, that in consideration and confidence of your prudence and fidelity, have appointed you, and by these presents do give you, or any one or more of you, full power and authority to examine Louis A. Callwell, Benjamin Gooden, Allen Goodin, and Catharine Goodin, John Haven, Jacob Bengen, Mary Bengen, Margaret Fager, and Joseph Graham, as witnesses in the cause aforesaid; and therefore we command you, or any one or more of you, that you do cause the said Louis A. Callawett, Benjamin Goodin, Allen Goodin, Catharine Goodin, John Haven, Jacob Bengen, Mary Bengen, Margaret Fager, and Joseph Graham, to come before you, or any one or more of you, and then and there examine them upon their corporal oaths upon the interrogatories and cross interrogatories hereunto annexed,

as witnesses in the cause aforesaid; and that you, or any one or more of you, do take such examination and reduce the same to writing, and return the same annexed to this writ, closed up under your seals, or the seal of any one or more of you, into our said court, with all convenient speed.

Witness the hon Roger B. Taney, chief justice of the United States, and the seal of said circuit court, this third Monday of April, [SEAL.] in the year of our Lord one thousand eight hundred and forty-five.

Issued this 18 August, 1845.

Attest, JOHN FITTS, *Clerk.*

Interrogatories to be submitted to Louis A. Callowatt, Benjamin Goodin, Allen Goodin, and Catharine Goodin, John Haven, Jacob Bengen, Mary Bengen, Margaret Fager, and Joseph Graham, witnesses for the plaintiff, in a cause pending in the circuit court of the United States of America, in which Sidney E. Collins is plaintiff, and Wm. R. Hallitt and Robert L. Walker are executors of the last will and testament of Joshua Kennedy, deceased, John H. Hastie and wife, A. R. Meslier and wife, John G. Aikin and wife, Augusta Kennedy, and Joshua Kennedy, James Campbell, James Innerarity, the Branch of the Bank of the State of Alabama at Mobile, are defendants.

1st. When and where were you born, and how long have you resided in the neighborhood of Pascagoula?

2d. Were you acquainted with Joseph Collins, a surveyor of the Spanish government, who resided at Pascagoula; when did your acquaintance with him first commence; how far did you reside from him; how often did you visit at his house; how often has he visited you?

3d. Will you state if you knew his wife, afterwards Mrs. Lanier; when did you first become acquainted with her, and where did she reside when you first knew her?

4th. Will you state whether they had any children; what were their names; how many of them are now living?

5th. Did you see Mr. and Mrs. Collins in company; were they received and treated as husband and wife; was Mrs. Collins called by her husband's name; did he treat her and introduce her as his wife?

6th. Were you, or any of you, present at the marriage of Joseph Collins with Elizabeth? If you know any fact material to the parties to this cause, or to the matters in issue between them, or which will serve to explain your testimony, answer fully and at large.

CAMPBELL & CHANDLER,
For Plaintiff.

Cross interrogatories.

1st. Was it not notorious and generally understood and believed, even when Mr. Collins attempted to introduce Elizabeth Wilson as his wife, that the parties were not married?

2d. Do you know of Mr. Collins affecting to treat Elizabeth Wilson

as his wife having induced any person to believe that she actually was such; if so, name that person?

3d. Did not Elizabeth Wilson inform you, or some one in your hearing, that she never had been married to Collins; did not Collins make the same declaration about Miss Wilson?

4th. State if you were acquainted with any person at Pascagoula, after the death of Joseph Collins, who went by the name of Elizabeth Wilson, unless it was the one before referred to who had lived with Collins.

5th. State where Mrs. Lanier (late Elizabeth Wilson) was born, to the best of your knowledge and information.

6th. State any thing material to the matters in issue between the parties, as to the testimony you have given, which you may know; answer fully.

STEWART & EASTON,
For Defendants.

Endorsed, filed August 7th, 1845.

JOHN FITTS, *Clerk.*

Cross interrogatories filed August 16th, 1845.

JOHN FITTS, *Clerk.*

Testimony of the plaintiff in regard to the marriage of Collins and wife, and birth of the children; witness: Joseph Graham, John Bann, Mary Bergen, Allen Gooden, Benjamin Gooden, Carllott and wife; Allen and Benjamin Goodin being also witnesses previously examined by defendants.

Deposition of Joseph Graham.

By virtue of a commission directed to me, Charles McRae, as commissioner, to take testimony from the honorable circuit court of the United States, for the fifth judicial circuit and southern district of Alabama, in the cause now pending in said court, wherein Sidney E. Collins is plaintiff, and William R. Hallett and Robert L. Walker, executors of the last will and testament of Joshua Kennedy, deceased, John Hastie and Secluda, his wife, Augustus R. Meslier and Mary, his wife, John G. Aikin and Clarissa, his wife, Joshua Kennedy, Augusta Kenda, et al., are defendants, I have caused Joseph Graham, one of the witnesses named in the said commission, to come before me at his house, in the county of Jackson, State of Mississippi, on this the 18th day of September, 1845, and have examined him upon his corporal oath on the interrogatories and cross interrogatories hereunto annexed:

1st. To the first interrogatory the witness answers: That his father informed him he was born in the town of Carlisle, State of Pennsylvania, in the year 1782; he has resided in the neighborhood of Pascagoula since the 31st day of December, 1802.

2d. To the 2d he answers: That he was acquainted with Joseph Collins to the best of his knowledge and belief; his acquaintance com-

menced with the year 1805; he resided about twelve miles from him; he seldom visited at his house; he has no recollection that Collins ever visited his house at all.

To the 3d he answers: He knew the woman he, Collins, lived with, who was afterwards Mrs. Lanier; the witness became acquainted with her in the year 1803, and she then resided at Doctor James White's.

To the 4th he answers: That Collins and this woman had three children, all boys; their names were George Emily, Sidney, and Joseph; the witness does not know how many of them are now living; he has not seen any of them for a number of years.

5th. To the 5th interrogatory he answers: That he has seen them in company at Doctor White's; they were received and treated with respect; the witness has heard some of the neighbors call her Mrs. Collins; Collins lived with her and acted towards her as his wife; the witness does not recollect of ever having seen him introduce her to any body.

6th. To the 6th interrogatory he answers: That he was not present at the marriage of Collins with Elizabeth Wilson. He knows of no other fact material to the parties in this cause.

JAMES GRAHAM, *Witness.* [SEAL.]

Sworn to and subscribed before me, this 18th day of September, 1845.

CHARLES McRAE, *Commissioner.* [SEAL.]

Cross interrogatories.

1st. To the first he answers and says: That as for himself he never believed them married; but as to the general opinion of their nearer neighbors, he does not know.

2d. To the 2d cross interrogatory he answers and says: That he does not know of Collins inducing any person to believe Elizabeth Wilson was his wife.

3d. To the 3d cross [interrogatory] he answers: No; that neither Elizabeth Wilson nor Collins ever informed him, or any one in his hearing, that they never had been married.

4th. To the 4th cross [interrogatory] he answers: He never knew any other person about Pascagoula to be called Elizabeth Wilson, but the woman who lived with Collins.

5th. To the 5th [cross] interrogatory he answers: He knows nothing.

6th. To the 6th he answers: He knows of nothing that may be of benefit to the parties.

JOSEPH GRAHAM.

Sworn to and subscribed before me, this 18th day of September, 1845.

CHARLES McRAE, *Commissioner.* [SEAL.]

I hereby certify, that I, Charles McRae, named a commissioner in the annexed commission, have, on the 18th day of September, 1845, caused Joseph Graham to come before me at his house, in Jackson county, State of Mississippi, he being one of the witnesses named in

said commission, and that I did then and there examine him on his corporal oath on the interrogatories and cross interrogatories hereunto annexed, and that I did take such examination, and reduce the same into writing.

All of which I hereby certify to the honorable circuit court of the United States, for the fifth judicial circuit and southern district of Alabama, from whence the said commission issued.

CHARLES McRAE, *Commissioner.* [SEAL.]

Deposition of John Haven.

By virtue of a commission directed to me, Charles McRae, a commissioner to take testimony from the honorable circuit court of the United States, for the fifth judicial circuit and southern district of Alabama, in the cause now pending in the said court, wherein Sidney E. Collins is plaintiff, and William R. Hallett and Robert L. Walker, executors of the last will and testament of Joshua Kennedy, deceased, John H. Hastie and Secluda, his wife, Augustus R. Meslier and Mary, his wife, John G. Aikin and Clarissa *Clarissa*, his wife, Joshua Kennedy, Augusta Kennedy, et al., are defendants, I have caused John Haven, one of the witnesses named in the said commission, to come before me at his house in the county of Jackson, State of Mississippi, on this the 19th day of September, 1845, and have examined him on his corporal oath on the interrogatories and cross interrogatories hereunto annexed.

1st. To the 1st interrogatory the witness answers: That he was born in the State of Virginia, to the best of his knowledge, in the year 1881 [1781;] he has resided in the neighborhood of Pascagoula since the year of 1803.

2d. To the 2d he answers: He was acquainted with Joseph Collins; his acquaintance commenced with Collins on Fish river, three or four years before he (the witness) came to the neighborhood of Pascagoula; after coming to Pascagoula, he resided about twenty miles from Collins, on the river above; he never visited at Collins's house; but thinks Collins may have been at his house two or three times.

3d. To the 3d interrogatory he says and answers: That he knew Elizabeth Wilson who lived with Collins as his wife, and afterwards became the wife of Lanier; he first knew and became acquainted with her at Biloxi, where she was then staying with her father; this was some six or seven years before witness came to Pascagoula.

4th. To the fourth interrogatory he says: He never knew *knew* any thing about the children until after Collins's death; he then recollects having seen two boys who were named George and Sidney Collins; he never saw these boys at their mother's house, but after they were bound out, and after their mother had married a second time.

5th. To the 5th interrogatory he answers: He never saw Mr. Collins and Mrs. Collins in company, nor did he ever see them together that he recollects of; he saw Mrs. Collins after she lived with Collins at Doctor White's, he always heard her called Betsey Wilson; as to

the manner in which Collins treated her and introduced her, he can't say, as he never saw them together either at home or in company.

6th. To the 6th interrogatory he answers: That he was not present at the marriage of Joseph Collins with Elizabeth Wilson; nor does he know of any other fact material to the parties in this cause.

his
JOHN ⋊ HAVEN.
mark.

Sworn to and subscribed with his mark before me, this 19th day of September, 1845.

CHARLES McRAE, *Commissioner.*

Cross interrogatories.

1st. To the first cross interrogatory he answers: That he can't say that Collins ever attempted to introduce her as his wife, as he never saw them together; it was generally understood that they lived together as man and wife do, but without there ever having been any marriage ceremony.

2d. To the 2d cross interrogatory he answers: He knows nothing.

3d. To the third cross he answers: That neither Collins nor Wilson ever informed him or any one in his presence that they were not married.

4th. To the 4th cross he answers: That he knew of no other person that ever went by the name of Elizabeth Wilson, but the one above referred to.

5. To the fifth he answers: That he knows nothing.

6th. To the sixth he answers: That he knows of nothing else material to the matters in issue between the parties.

his
JOHN ⋊ HAVEN.
mark.

Sworn to and subscribed with his mark before me, this 19th day of September, 1845.

CHARLES McRAE, *Com'r.*

I hereby certify, that I, Charles McRae, named as commissioner in the annexed commission, have, on this the 19th day of September, 1845, caused John Haven, one of the witnesses named in the said commission, to come before me at his house, in Jackson county, State of Mississippi, and that I did then and there examine him on his corporal oath, on the interrogatories and cross interrogatories hereunto annexed, and that I did take such examination down in writing, (by me reduced to writing) all of which I hereby certify to the hon. the circuit court of the United States, for the fifth judicial circuit and southern district of Alabama, from whence said commission issued.

CHARLES McRAE, *Com'r.*

Deposition of Mary Bengen.

By virtue of a commission, directed to me, Charles McRae, commissioner, to take testimony from circuit court of the United States, for the fifth judicial circuit and southern district of Alabama, in the cause now pending in said court, wherein Sidney E. Collins is plaintiff, and Wm. R. Hallett and Robert L. Walker, executors of the last will and testament of Joshua Kennedy, deceased, John H. Hastie and Secluda, his wife, Augustus R. Meslier and Mary, his wife, John G. Aiken and Clarissa, his wife, Joshua Kennedy, and Augusta Kennedy, et al., are defendants, I have caused Mary Bengen, one of the witnesses named in said commission, to come before me, at her house in Bayou Coden, in Mobile county, Alabama, on the 2d day of September, 1845, and on oath to answer the interrogatories and cross interrogatories annexed.

1st. To the 1st interrogatory she answers: That she was born on Cat island, about 30 miles from Pascagoula; she does not know the exact year of her birth, but thinks it must have been about 1780; she came to Pascagoula when she was a girl, 8 or 9 years old, and resided there until the year 1836.

2d. To the second interrogatory she answers: That she was well acquainted with Joseph Collins, a surveyor of the Spanish government, who resided at Pascagoula; she cannot state the year when her acquaintance commenced with Collins, but it was from the time of his first arrival at Pascagoula, when he came from Fish river, to fill the office of surveyor under the Spanish government at Pascagoula; she resided about one mile from where *where* Collins lived after he united himself with Elizabeth Wilson; she visited very often at Collins' house, going almost every Sunday, and Collins with his family was as often at hers; they were almost the nearest neighbors, and kept up constant intercourse.

3d. To the third interrogatory she answers: That she was very intimately acquainted with Elizabeth Wilson, who lived with Collins as his wife; the witness' acquaintance commenced with Elizabeth Wilson when she was a girl living with her father, some time before Collins came to Pascagoula.

4th. To the fourth interrogatory she answers: That they had three children, whose names were George Emily, Sidney, and Joseph Collins; she does not know how many of them are now living.

5th interrogatory. Answer to 5th interrogatory she answers: That she frequently saw them in company; they were received and treated as husband and wife, or as people who live together in that relation were received; the woman was called Madam Collins by every body; Collins treated her as his wife, and generally adressed [her] by the name of Betsey.

6th. To the 6th interrogatory she answers: That she was not present at the marriage of Elizabeth Wilson and Joseph Collins; she knows of no other facts that may benefit the parties.

her
MARY ✕ BENGEN.
mark.

Sworn to and subscribed with her mark before me, this 22d day of September, 1845. CHARLES McRAE, *Com'r.*

Cross interrogatories.

1st. To the 1st cross interrogatory she answers: That if there was a marriage ceremony between Collins and his wife, it was not generally known; in those days it did not make any difference whether people were regularly married or not, as to the manner in which they were received and considered in the community; most of the inhabitants wished to be married by a priest, and he was not generally convenient, and most persons went to New Orleans or Mobile to see him; some lived together a long time before; the deponent herself lived a long time with her husband before marriage, but was always considered as his wife, and called Madam Bengen, or Mademoiselle Mary, as she happened to be addressed by an American or French person; it is customary among the Creoles of the coast to call women, even after marriage, by their maiden names, and the deponent is called to this day, and is generally known, by the name of Mademoiselle Mary.

2. To the 2d she answers: That Collins always treated Elizabeth Wilson as his wife; was kind to her, and indulged her in almost every thing, and lived with her constantly until the day of his death, leaving to her every thing he had in the house; from his conduct he might have induced many to believe that she was his wife, but the witness can't name any particular person.

To the 3d interrogatory she answers: That she never heard either Collins or Elizabeth Wilson speak of their marriage.

4th. To the 4th cross interrogatory she answers: That she never knew any person at Pascagoula who was called Elizabeth Wilson, but the woman above alluded to, and she was called after the death of Collins, and until her marriage with Lanier, sometimes Madam Collins and sometimes Betsey.

5th. To the 5th interrogatory she answers: That she knows nothing.

6. To the 6th interrogatory she answers: That she knows nothing that will benefit the parties.

her
MARY ✕ BENGEN.
mark.

Sworn to and subscribed with her mark before me, this 22d day of September, 1845.

CHARLES McRAE, *Com'r.*

I certify, that I, Charles McRae, named as commissioner in the annexed commission, have, on this 22d day of September, 1845, caused Mary Bengen, one of the witnesses named in the said commission, to come before me at her house in Bayou Coden, in Mobile county, State of Alabama, and that I did then and there examine her on her corporal oath, upon the interrogatories and cross interrogatories hereunto annexed, and that I did take such examination and reduce the same to writ-

ing; all of which I do hereby certify to the hon. the circuit court of the United States, for the fifth judicial circuit and southern district of Alabama, from whence this said commission issued.

CHARLES McRAE, *Com'r.*

Deposition of Jacob Bengen.

By virtue of a commission directed to me, Charles McRae, a commissioner to take testimony from the hon. circuit court of the United States, for the fifth judicial circuit and southern district of Alabama, in the cause pending now in said court, wherein Sidney E. Collins is plaintiff, and Robert L. Walker and Wm. R. Hallett are executors of the last will and testament of Joshua Kennedy, deceased, John H. Hastie and Secluda, his wife, Augustus R. Meslier and Mary, his wife, John G. Aiken and Clarissa, his wife, Augusta Kennedy, and Joshua Kennedy, et al., are defendants, I have caused Jacob Bengen, one of the witnesses named in said commission, to come before me at his house, in Bayou Coden, in Mobile county, and State of Alabama, on this the 22d day of September, 1845, and have interrogated him upon oath on the interrogatories and cross interrogatories annexed.

1st. To the first interrogatory he answers: That he was born at Point Coupée, on the Mississippi river, in or about *or about* the year 1769, and came to Pascagoula when he was 9 or 10 years of age, and resided there for thirty years or more.

2d. To the 2d interrogatory he answers: That he knew the said Collins well; his acquaintance commenced with him while he (Collins) lived at Fish river, and continued intimately after he came to, and during the time of his whole stay and residence at, Pascagoula; the deponent resided about one mile from Collins; was frequently at his house, and was frequently visited by Collins.

3d. To the 3d interrogatory he answers: That he was well acquainted with Collins' wife; he first knew her when she was a little girl, living with her father, at Baloxi; afterwards, her father (whose name was Wilson) brought her to Pascagoula, and remaining at Pascagoula for some time, went away and left his daughter with the family of Doctor White; she there became acquainted with Collins, and afterwards lived with him as his wife.

4. To 4th interrogatory answers: That they had three children, George Emily, Sidney, and Joseph; the deponent he recollects that his mother acted as midwife for one of these children; he does not know how many of them are now living, having not seen one, if any, of them for many years.

To 5th interrogatory he answers: That he has frequently seen Mr. and Mrs. Collins in company; they were received and treated as husband and wife; she was always called Madam Collins, and Collins treated her and introduced her as his wife.

6. To 6th interrogatory he answers: That he was not present at the marriage of Joseph Collins with Elizabeth Wilson.

his
JACOB ⋈ BENGEN.
mark.

Sworn to and subscribed before me, this 22d day of September, 1845.
CHAS. McRAE, *Com'r.*

Cross interrogatories.

To 1st cross he answers: That he never understood that Collins and Betsey Wilson were not married; he always considered them as husband and wife, and does not recollect of ever having heard the fact of their being such talked about in the community; they lived and were treated and acknowledged as husband and wife.

2. To 2d cross interrogatory he answers: That Collins' conduct towards Elizabeth Wilson induced every one to believe that she was his wife; the deponent does not know that Collins attempted, by any other means than by his mode of life, to induce any one to believe that he was married actually; if he did, deponent cannot now name such a person.

3d. To 3d cross he answers: That he never heard either of these parties make any declaration about their marriage.

4. To 4th cross he answers: That he never knew any other person by the name of Elizabeth Wilson; and she was called, after Collins' death, and up to the time of her marriage with Lanier, Madam Collins.

5. In answer to 5th cross he answers: That he does not know.

6. To the 6th cross interrogatory he answers: That he does not know that he can state any other fact that is material to the parties in issue in this cause.

his
JACOB ⋈ BENGEN.
mark.

Sworn to and subscribed before me, 22d September, 1845.
CHAS. McRAE, *Com'r.*

I hereby certify, that I, Charles McRae, named as commissioner in the a nexed commission, have, on this the 22d day of September, 1845, caused Jacob Benge, one of the witnesses named in the said commission, to come before me, at his house, in Bayou Coden, in Mobile county, State of Alabama, and that I then and there did examine him, on his corporal oath, upon the interrogatories and cross interrogatories hereunto annexed, and that I did take such examination and reduce the same to writing. All of which I hereby certify to the honorable the circuit court of the United States, for the fifth judicial circuit and southern district of Alabama, from whence the said commission issued.
CHAS. McRAE, *Com'r.*

Deposition of Allen Goodin.

By virtue of a commission directed to me, Charles McRae, a commissioner to take the testimony, from the honorable the circuit court of the United States, for the fifth judicial circuit and southern district of Alabama, in the cause now pending in said court, wherein Sidney E. Collins is plaintiff, and Wm. R. Hallett and R. L. Walker, executors of the last will and testament of Joshua Kennedy, deceased, John H.

Hastie and Secluda, his wife, Augustus R. Meslier and Mary, his wife, John G. Aikin and Clarissa, his wife, Joshua Kennedy, and Augusta Kennedy, et al., are defendants, I have caused Allen Goodin, one of the witnesses named in said commission, to come before me, at his house, in Mobile county, State of Alabama, on the 21st day of September, 1845, and on oath to answer the interrogatories and cross interrogatories annexed.

1. To the 1st interrogatory he answers: That he was born in the year 1788, in Green county, Tennessee; that he went to the neighborhood of Pascagoula, in January, (1809,) and remained there until 1823.

2. To the 2d interrogatory he answers: That he was acquainted with Joseph Collins, who resided at Pascagoula; his acquaintance commenced with Collins in the month of February, 1809; he resided then at Pascagoula, between three and four miles from Collins, but was a portion of the time fifteen or twenty miles above the bay, on the Pascagoula river; and a portion of the time, also, running a schooner between New Orleans and Pascagoula; he went to Collins' house when his business called him there; he can't say how many times; the witness does not recollect that Collins ever came to his house at all.

3. To the 3d he answers: That he knew the woman who lived with Collins, and who afterwards became Mrs. Lanier; his acquaintance commenced with her in January, 1809; she lived with Collins, in his house, at Pascagoula.

4. To the 4th he answers: That, when he first came to Pascagoula, and became acquainted with these parties, they had one child, whose name was George Emily Collins; he then appeared to be two or three years old; the 2d child (it is the witnesses opinion) was born in the year 1809, but he can't say with certainty; his name was Sidney Collins; there was a third child, which the witness saw when he was a boy, but can't speak as to the time of his birth; he has seen none of the children for a number of years, and can't say how many are living.

5. To the 5th he answers: That he never saw Joseph Collins and Elizabeth Wilson together any where but at Collins' house; the witness does not recollect of ever having heard this woman called by any other name than Elizabeth or Betsy Wilson; Collins lived with and acted towards this woman as his wife, but the witness does not recollect of ever having seen him introduce her.

6. To the 6th he answers: That he was not present at the marriage of Joseph Collins with Elizabeth Wilson, and that he knows of no other fact that is material to the parties to this cause.

ALLEN GOODIN.

Sworn to and subscribed before me, this 21st day of September, 1845.

CHARLES McRAE, *Com'r.*

Cross interrogatories.

1. To the 1st he answers: That he never knew Collins to attempt to introduce Elizabeth Wilson as his wife; if they were married, the witness never knew of it.

2. To the 2d he answers: That he (the witness) once heard his father (Benjamin Goodin, jr.,) say that Joseph Collins told him he had went before a notary public, in New Orleans, and acknowledged this woman, Elizabeth Wilson, to be his wife; the notary's name, to the best of the witnesses recollection, was Carlyle Pollock, and the act of acknowledgment must have been made in the latter part of the year 1810, or in the spring of 1811.

3. To the 3d he answers: That he never heard either Elizabeth Wilson or Collins speak of their marriage, or of their not having been married.

4th. To the 4th he answers: That he never knew any other person who bore the name of Elizabeth Wilson but this woman who lived with Collins.

5. To the 5th he answers: That he knows nothing.

6. To the 6th he answers: That he knows of no other fact material to the parties in this cause. ALLEN GOODIN.

Sworn to and subscribed before me, this 21st day of September, 1845.
CHAS. McRAE, *Com.*

I hereby certify, that I, Charles McRae, named as commissioner in the annexed commission, have, on this 21st day of September, 1845, caused Allen Goodin, one of the witnesses named in the said commission, to come before me at his house in Mobile county, State of Alabama, and that I then and there did examine him on his corporal oath upon the interrogatories and cross interrogatories hereunto annexed, and that I did take such examination and reduce the same to writing. All of which I do hereby certify to the hon. circuit court of the United States, for the fifth judicial circuit and southern district of Alabama, from whence the said commission issued.

CHARLES McRAE, *Com'r.*

Deposition of Benjamin Goodin.

By virtue of a commission directed to me, Charles McRae, as commissioner to take testimony, from the honorable circuit court of the United States, for the fifth judicial circuit and southern district of Alabama, in the cause now pending in said court, wherein Sidney E. Collins is plaintiff, and Wm. R. Hallitt and Robert L. Walker, executors of the last will and testament of Joshua Kennedy, deceased, John H. Hastie and Secluda, his wife, Augustus R. Meslier and Mary, his wife, John G. Aikin and Clarissa, his wife, Joshua Kennedy, Augusta Kennedy, et al., are defendants, I have caused Benjamin Goodin, one of the witnesses named in the said commission, to come before me at his house in Jackson county, Mississippi, on the 25th day of September, 1845, and upon oath to answer the interrogatories and cross interrogatories annexed.

1. To the first interrogatory the witness answers: That he was born in the State of Tennessee; that he came to Pascagoula on the 2nd day of May, in the year (1807) eighteen hundred and seven, and has resided

from that day to the present time in the neighborhood; he was born on the 15th day of September, 1783.

2. To the 2d he answers: That he was intimately acquainted with the said Joseph Collins; his acquaintance commenced with Collins immediately on his arrival at Pascagoula; Collins being the Spanish officer to whom the witness had to deliver his passport, he became acquainted with him at once, and was soon after employed by Collins to improve a piece of land, and after improving the land he was employed by Collins to build a dwelling house, and remained in his employ for six months or upwards, and during this time was under the same roof with Collins, and in his constant association; after completing Collins' house, the witness moved upon the Pascagoula river, about 18 or 20 miles above, where he resided for some time over a year; he then became master of a schooner and followed the coasting trade, and was in the habit of getting his passports and sailing papers from Collins.

3. To the 3d he answers: That he was also well acquainted with the wife of Collins; his acquaintance commenced with her on the same day that he first knew Collins; she was introduced to the witness and his father by Mrs. White as Mistress Collins; she then resided with her husband in the family of Dr. James White, at Pascagoula.

4. To the 4th he answers: That when he first became acquainted with them they had one child, afterwards they had two others, all boys; they were named George, Sidney, and Joseph; the witness cannot say how many of these children are now living; he knows that Joseph is dead, and has heard that George was also.

5. To the 5th he answers: That he has often seen Mr. and Mrs. Collins in company; they were always received and treated as husband and wife; Mrs. Collins was called by her husband's name; she was treated and introduced by her husband as his wife, and the witness has frequently heard him address her as his wife.

6. To the 6th he answers: That he was not present at the marriage of Joseph Collins and Elizabeth Wilson; as the witness has said before, they were living together as husband and wife and had one child when he came to the country; the witness further testifies that Collins once told him on his (Collins') return from New Orleans, that while in town he had been very sick, and believed he should die; that while in this sickness he sent for a notary public and made an acknowledgment before him that this woman, Elizabeth Wilson, was his true and lawful wife, and that the three children he had by her were his legitimate children, and as such he wished them to inherit his property; the notary's name the witness does not recollect, but thinks the acknowledgment was made in the year 1810; the witness further testifies that he saw Collins frequently during his last illness; that he was one of the subscribing witnesses to his will, and that he heard Collins say that Elizabeth (or Betty, as he commonly called her,) had been a good and virtuous wife to him, and that he wished to secure to her and his children all his property; the witness always looked upon and considered Collins and Eliz-

abeth as husband and wife, always esteemed his children as legitimate and lawful children, and that he has heard Collins repeatedly acknowledge them as such. BENJN. C. GOODIN.

Sworn to and subscribed before me, this 25th day of September, 1845.
CHARLES McRAE, *Com'r.*

Cross interrogatories.

1. To the 1st cross interrogatory he answers: That he believes there were some who doubted the marriage of Collins with Elizabeth Wilson, but this doubt was not general; on the contrary, they were in all cases received, acknowledged, and entertained as husband and wife.

2. To the 2nd he answers: That Collins treated her as [his] wife before all persons, and induced every one to believe he considered her as such; the witness himself believed she was the wife of Collins, and his father also acknowledged her as the wife of Collins.

3. To the 3d he answers: No; that neither Collins nor Elizabeth ever made such a declaration to him.

4. To the 4th he answers: That he knew no person at Pascagoula, after the death of Collins, who went by the name of Elizabeth Wilson; the witness alwas called that woman Mrs. Collins, and so far as his memory serves him she was called so by every one.

5. To the 5th he answers: That he knows nothing.

6. To the 6th he answers: That nothing else comes to his memory at this time which he believes material to the parties.

BENJ. C. GOODIN.

Sworn to and subscribed before me, this the 25th day of September, 1845. CHARLES McRAE, *Commissioner.*

I hereby certify that I, Charles McRae, named as commissioner in the annexed commission, have, on this the 25th day of September, 1845, caused Benjamin Goodin, one of the witnesses named in the said commission, to come before me at his house in Jackson county, Mississippi, and that I have then and there examined him on his corporal oath upon the interrogatories and cross interrogatories hereunto annexed, and that I did take such examination and reduce the same to writing; all of which I do hereby certify to the honorable circuit court of the United States, for the 5th judicial circuit and southern district of Alabama, from whence the said commission did issue.

CHARLES McRAE, *Com'r.*

Deposition of Louis A. Caillant.

By virtue of a commission directed to me, Charles McRae, as commissioner to take testimony, from the honorable circuit court of the United States, for the 5th judicial circuit and southern district of Alabama, in the cause now pending in *in* said court, wherein Sidney E. Collins is plaintiff, and Wm. R. Hallit and Robert L. Walker, executors of the last will and testament of Joshua Kennedy, deceased, John H. Hastie and Secluda, his wife, Augustus R. Meslier and Mary, his wife,

John G. Aikin and Clarissa, his wife, Joshua Kennedy, Augusta Kennedy, et al., are defendants, I have caused L. A. Caillint, one of the witnesses named in the said commission, to come before me at his house in Biloxi, Harrison county, Miss, on the 29th day of September, 1845, and on oath to answer the interrogatories and cross interrogatories annexed.

1. To the 1st interrogatories the witness answers: That he was born in New Orleans in the year 1790; he came to Pascagoula in the month of September, 1809, and resided there until November, 1812.

2. To the 2d he answers: That he knew the said Collins, but was never on any terms of intimacy or friendship with him; Collins always seemed to entertain animosity towards him, from what cause the witness knew not; he never knew Collins until he, (the witness,) came to reside at Pascagoula; he lived about a half a mile distant from him; does not recollect of ever going to Collins' house but once; the witness was at that time a young man, and had no house of his own; but has seen Collins several times at Nicolets, the person with whom the deponent lived.

3. To the 3d he answers: That he knew Mrs. Collins, who afterwards became Mrs. Lanier; his acquaintance commenced with her during the two years he resided at Pascagoula; she was during that time living with Collins as his wife.

4. To the 4th he answers: That he knows they had three children; the oldest was called George, the 2d Sidney, he does not recollect the name of the 3d; and has no idea how many of these children are now living; he has heard that the oldest was dead.

5. To the 5th he answers: That he can't say that he ever saw Mr. and Mrs. Collins together in company; they were treated as husband and wife, and she was called Madam Collins.

6. To the 6th he answers: That he was not present at the marriage of Collins with Elizabeth Wilson; this took place several years before the witness came to the country; the witness always understood and believes that it was generally supposed that there was a marriage ceremony performed by Mr. White, as syndic, under the Spanish government, but a marriage of this kind was not at that time considered as valid by the laws of Spain; the witness's own impression at that time was, that a marriage ceremony must be performed by a priest to be valid; the witness further states, that he always believed, and believes, that it was the general opinion of the community that Collins esteemed this woman as his lawful wife, and the children as his legitimate children, whom he wished to inherit his property; the woman was always considered as Collins' wife in the county, and was called, and received, and entertained as such.

L. A. CAILLANT'T.

Sworn to and subscribed before me, this 29th day of September, 1845.

CHAS. McRAE, *Commissioner.*

Cross interrogatories.

1. To the 1st cross interrogatory he answers: That at the time it was thought that the marriage ceremony, as performed by Mr. White, was not valid because the people were accustomed to be married by a priest, and did not consider any other form of matrimony binding by the laws of Spain, and by the rules of the Catholic church, which was then the only religion in the county; but it was always believed that there had been a marriage ceremony performed by Mr. White.

2. To the 2d cross he answers: That from Collins' general treatment to Elizabeth Wilson, any person would have been led to believe that she was his wife; he knows of no particular person whom he took any pains to make believe so.

3. To the 3d he answers: No; that neither Collins nor Elizabeth Wilson ever informed him that they were not married.

4. To the 4th he answers: That Elizabeth Wilson was always called Madame Collins during the time she lived with Collins, and after his death, until marriage with Lanier; the witness never knew any other person by the name of Elizabeth Wilson but Madame Collins.

5. To the 5th he answers: That he knows nothing.

6. To the 6th he answers: That he believes that he has answered all that he knows that can benefit the parties to this suit.

L. A. CAILLAVET.

Sworn and subscribed before me, this 29th day of September, 1845.

CHAS. McRAE, *Commissioner.*

I hereby certify, that I, Chas. McRae, named as commissioner in the annexed commission, have, on this the 29th day of September, 1845, caused Louis A. Caillavet, one of the witnesses named in the said commission, to come before me at his house in Baloxi, Harrison county, Mississippi, and that I then and there did examine him on his corporal oath on the interrogatories and cross interrogatories hereunto annexed, and that I did take such examination and reduce the same to writing; all of which I do hereby certify to the honorable circuit court of the United States, for the fifth judicial circuit and southern district of Alabama, from whence the said commission did issue.

CHAS. McRAE, *Commissioner.*

Deposition of Margaret Fayard, the wife of Louis A. Caillant.

By virtue of a commission directed me, Chas. McRae, as commissioner to take testimony, from the honorable circuit court of the United States, for the fifth judicial circuit and southern district of Alabama, in the cause now pending in said court, wherein Sidney E Collins is plaintiff, and Wm. R. Hallett and Robert L. Walker, executors of the last will and testament of Joshua Kennedy, deceased, John H. Hastie and Secluda, his wife, Augustus R. Meslier and Mary, his wife, John G. Aikin and Clarissa, his wife, Joshua Kennedy, and Augusta Kennedy, et al., are defendants, I have caused Margaret Fayard, one of the witnesses

named in the commission, to come before me, at Beloxi, Harrison county, Mississippi, on the 29th day of September, 1845, and on oath to answer the interrogatories and cross interrogatories annexed.

1. To the 1st she answers: That she was born at Baloxi in or about the year 1790, and resided at Pascagoula between 5 or 6 years, from the year 1806 or '7 to the year 1812; she frequently visited Pascagoula before she went to reside there.

2. To the 2d she answers: That she knew Collins, a surveyor of the Spanish government; her acquaintance commenced with him a short time after his marriage with Elizabeth Wilson; she resided at that time with her aunt, Mary Louisa Budreau, about one mile from Mr. Collins; she visited sometimes at Mr. Collins' house, and saw him sometimes at her aunt's, but their visits were not frequent until Collins was taken sick; then he wished every one to come often and see him; she was present at his death.

3. To the 3d she answers: That she was well acquainted with Collins' wife, afterwards Mrs. Lanier, her acquaintance first commenced with her as Elizabeth Wilson, at Beloxi, where she came with her father.

4. To the 4th she answers: That they had three boys, named George, Sidney, and Joseph; the witness stood as god-mother to Sidney when he was baptized; she does not know how many of them are now living; she has heard the oldest was dead.

5. To the 5th she answers: That she has seen Mr. and Mrs. Collins in company; they were received and treated as husband and wife; Mrs. Collins was called by her husband's name; he treated her and introduced her as his wife, and called her his wife when speaking of her to others.

6. To the 6th she answers: That she was not present at the marriage of Joseph Collins with Elizabeth Wilson, but she always understood and believed that there was a marriage performed by Doct. White; she has heard Mrs. Collins speak of her marriage; the first time the witness saw her after her marriage she, (Mrs. Collins,) talked to her about it.

her
MARGARET ⋈ FAYARD.
mark.
The wife of L. A. Caillavett.

Sworn to and subscribed with her mark before me, this the 29th September, 1845.

CHAS. McRAE, *Commissioner.*

Cross interrogatories.

1. To the 1st cross interrogatory she answers: That it was never believed that there was no marriage ceremony, but the people doubted whether the marriage was a good one or not, because it was not the customary way of celebrating marriages, and because it was done in a private manner, or without inviting the neighbors to the wedding.

2. To the 2d she answers: That Collins treated Elizabeth Wilson in such a manner as to induce every person to believe she was his wife.

3. To the 3d she answers: That she never heard Elizabeth Wilson, or Collins, say they were not married.

4. To the 4th she answers: That she never knew of any person but Madam Collins who bore the name of Elizabeth Wilson, but she was always called Madame Collins from the time of her marriage with Collins to the marriage with Lanier.

5. To the 5th she answers: That she does not know.

6. To the 6th she answers: That she knows of no other fact material to the parties in issue in this cause, unless it be that the children were all baptized by the name of Collins, and as his lawful children.

her
MARGARET ✕ FAYARD.
mark.
The wife of L. A. Caillavett.

Sworn to and subscribed with her mark before [me,] this 29th day of September, 1845.

CHAS. McRAE, *Commissioner.*

I hereby certify, that I, Chas. McRae, named as commissioner in the annexed commission, have, on this the 29th day of September, 1845, caused Margaret Fayard, one of the witnesses named in the said commission, to come before me at Baloxi, Harrison county, Mississippi, and that I did then and there examine her on her corporal oath upon the interrogatories and cross interrogatories hereunto annexed, and that I did take such examination and reduce the same to writing; all of which I hereby certify to the honorable circuit court of the United States, for the fifth judicial circuit and southern district of Alabama, from whence the said commission did issue.

CHAS. McRAE, *Commissioner.*

Commission to M. J. McRae and Wm. Lewis.

CIRCUIT COURT OF THE UNITED STATES,
Southern district of Alabama:

To Malcolm J. McRae and Wm. Lewis, esquires:

Whereas, we repose in you full confidence, we have appointed you, and do give you, and each of you, full power and authority to examine all such witnesses as the defendants, or either of them, in a certain cause pending in the circuit court of the United States, for the southern district of Alabama, in which Sidney E. Collins is plaintiff, and Wm. R. Hallett and Robert L. Walker, executors of the last will and testament of Joshua Kennedy, deceased, J. H. Hastie and Secluda, his wife, J. G. Aiken and Clarissa, his wife, A. R. Meslier and Mary, his wife, Joshua Kennedy, Augusta Kennedy, Samuel Kitchen, William Kitchen, James Innerarity, Jas. Campbell, and the Branch of the Bank of the State of Alabama at Mobile, are defendants, may produce before you, on interrogatories and cross interrogatories; and we do give you, and each and either of you, full power and authority to call said witnesses before you, or either of you, and to examine them on their re-

spective oaths, at such time and place as you may appoint; and do hereby require you to reduce their answers to writing, and to endorse the same under your hands and seals, or of either of you, into the court aforesaid. Hereof fail not, and have you before the said court this commission, with your return.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, the 4th Monday of December, 1844, and of the American independence the sixty-ninth year.

JOHN FITTS.

Issued 28th day of February, 1845.

JOHN FITTS, *Clerk.*

This commission is approved.

WM. CRAWFORD.

Allen and Benjamin Goodin for defendants.

Interrogatories to be propounded to Allen Goodwin and Benjamin Goodwin, witnesses for the defendants in a certain suit in the U. S. circuit court at Mobile, wherein Sidney E. Collins is plaintiff, and Wm. R. Hallett and Robert L. Walker, executors of the last will and testament of Joshua Kennedy, deceased, the heirs of Joshua Kennedy, and others, are defendants.

1. Were you acquainted with Joseph E. Collins, a deputy surveyor general under the Spanish government; when and where did you first become acquainted with him, and how long did your acquaintance with him continue; where have you lived since the year 1805?

2d. Were you acquainted with a woman named Elizabeth Wilson, who lived at Pascagoula; did you live near her, and when and how ng; state what was the general repute, at the time among the neighbors, as to the said Elizabeth and the said Joseph Collins being legally married; did you know of their being married?

3d. Did you know the two children of said Elizabeth Wilson, called George E. Collins and Sidney E. Collins, the reputed children of said Joseph E. Collins; can you state when each of them were born; when did you first know them, and how old was George, and how old was Sidney when you first knew them; what was the ordinary or customary mode of marrying in the Spanish times; was it then thought necessary that a priest should perform the marriage ceremony, in order to make the marriage lawful or binding; what was then deemed necessary to make a marriage lawful; were there any priests in the country, from about the year 1806 to the year 1812, and could their services to join parties in marriage be obtained by such as desired it?

5th. Would a marriage contracted at Pascagoula about the time spoken of in the last interrogatory, in the legal or customary manner, be apt to be an event of notoriety or not; was the settlement a thick or thin one, or how was it?

6th. If you know anything material to the matters in issue between

these parties, or to the subject in controversy, or to the matters in evidence to which you have been interrogated, answer fully and at large.

STEWART & EASTON,
For defendants.

Filed February 15, 1845.

JOHN FITTS, *Clerk.*

Cross interrogatories to be propounded and submitted to Allen Goodwin and Benjamin Goodwin, witnesses for the defendants, in a certain cause pending in the circuit court of the United States, for the southern district of Alabama, and in which Sidney E. Collins is plaintiff, and Wm. R. Hallett and Robert L. Walker, executors of the last will and testament of Joshua Kennedy, deceased, and others, are defendants.

1st. Did you ever visit at the house of Joseph Collins, at Pascagoula, after his connexion with Elizabeth Wilson; how did he call her; did she pass by the name of Mrs. Collins; did Collins address her as his wife; did the children bear the name of Collins; when you had occasion to speak to Mrs. Collins, what did you call her; did she set at the table with you at meals, and preside at the table; who managed the household affairs in the house?

2d. Where did Elizabeth Wilson reside before her connexion with Collins; do you know how many children the said parties had; what was their names; when did the children, Joseph and George, die; were either of them ever married?

CAMPBELL & CHANDLER,
For plaintiffs.

Filed February 21, 1845.

JOHN FITTS, *Clerk.*

Deposition of Benjamin C. Goodwin, taken before me, William Lewis, the undersigned commissioner, pursuant to a commission issued from the hon. circuit court of the United States, for the southern district of Alabama, in the case of Sidney E. Collins vs. Wm. R. Hallett and Robt. L. Walker, executors of the last will and testament of Joshua Kennedy, deceased, and others.

The said Benjamin C. Goodin being called and caused to come before me, at his residence in the county of Jackson, State of Mississippi, this fifth day of March, in the year of our Lord one thousand eight hundred and forty-five, (1845,) and being duly sworn according to law on the holy evangelist of Almighty God, and the interrogatories hereto answered being distinctly read over to and propounded to him, did thereto severally depose and make answers as follows, to wit:

Testimony of Benj. Goodin.

To the 1st interrogatory he answers: I was acquainted with Joseph E. Collins, deputy surveyor general under the Spanish government; I was acquainted with Joseph E. Collins on the second day of May, 1807, at Pascagoula, in the State of Mississippi, county of Jackson, then called West Florida; this was my first acquaintance with Joseph

E. Collins, and my acquaintance continued with him until the day of his death, which occurred in the first part of the summer 1811. My residence has been, since 1807, principally in the county of Jackson, in the State of Mississippi.

2. To the second interrogatory he answers: I was acquainted with a woman named Elizabeth Wilson, who lived at Pascagoula, and I lived in the same house with her two or three months, and was a neighbor to her until she left Pascagoula; my first acquaintance with her was on the fourth day of May, 1807, and my acquaintance continued with her until the year 1823. The general repute among the neighbors at that time was, that they were not married; and it was and is my impression that they never were married lawfully.

3. To the 3d interrogatory he answers: I knew the two children of the said Elizabeth Wilson, called George E. Collins and Sidney E. Collins, the reputed children of said Joseph E. Collins; I cannot state the time of George E. Collins' birth, for he was born before my acquaintance with the said Joseph Collins and Elizabeth Wilson; but Sidney E. Collins was born in the latter part of the year 1808; I knew George E. Collins in the year 1807, and Sidney from his birth.

4. To the fourth interrogatory he answers: That the ordinary or customary mode of marrying in the Spanish times was by a Catholic priest in this part of the Spanish government; it was necessary for a priest to perform the marriage ceremony to make a marriage lawful and binding; it was deemed necessary, to make the marriage lawful, for a priest to perform the marriage ceremony; there was a priest in this country from the year 1807 to the year 1812 occasionally; a priest could have been obtained by any one who would have been desirous of marrying, at the times above designated.

5. To the 5th he answers: A marriage, contracted in the times above mentioned in the fifth interrogatory, at Pascagoula, in the legal or customary manner, was an event of notoriety; the settlement was thinly inhabited at that time.

6. To the sixth interrogatory he answers: That I know nothing about the matters at issue between the parties, neither the subject in controversy, as to the matters in evidence, to which I have been interrogated, are fully answered in the five preceding interrogatories.

BENJ. C. GOODIN.

Subscribed and sworn to this the fifth day of March, 1845, before me.
WILLIAM LEWIS, *Commissioner.*

Cross interrogatories.

To the first cross interrogatory he answers: That he did visit at the house of Joseph E. Collins at Pascagoula after his connexion with Elizabeth Wilson, and I have often heard him call her Betsey; she did pass by the name of Mrs. Collins, and Collins did address her as his wife; the children bore the name of Collins; when I had occasion to speak to her I called her Mrs. Collins; she did set with me at meals, and presided also at the table, and managed the affairs of the house.

To the 2d cross interrogatory: Elizabeth Wilson resided at Doctor James White's when I first became acquainted with her, which was on the fourth day of May, 1807; she was then living with Joseph E. Collins; I do not know how long before my acquaintance with them their connexion commenced; the said parties had three children, their names were George Emily, Sidney E., and Joseph Collins; I don't know when any of them died; if any of them were ever married it has slipped my memory; but I think that they were not married.

BENJAMIN C GOODIN.

Subscribed and sworn to before me, this the 5th of March, 1845.
Before me, WILLIAM LEWIS, *Commissioner.*

Deposition of Allen Goodwin, taken before me, William Lewis, the undersigned commissioner, pursuant to a commission issued from the honorable circuit court of the U. S. for the southern district of Alabama, in the case of Sidney E. Collins vs. William R. Hallett and Robt. L. Walker, executors of Joshua Kennedy, deceased, and others; the said Allen Goodwin being called and caused to come before me, at his residence in the county of Mobile, and State of Alabama, this the eighth day of March, in the year of our Lord one thousand eight hundred and forty-five, and being duly sworn according to law on the holy evangelist of Almighty God, and the interrogatories and cross interrogatories hereto annexed being distinctly read and propounded to him, did thereto severally depose and make answer as follows, to wit:

To the first interrogatory he answers: I was acquainted with Joseph E. Collins, deputy surveyor general under the Spanish government; my first acquaintance with the said Joseph E. Collins was in February, 1809, at Pascagoula, then called West Florida; my acquaintance continued with him until he died, which happened in the spring or summer of 1811; my residence, since 1809, has been in Mississippi and in Alabama.

To the second interrogatory he answers: I was acquainted with a woman named Elizabeth Wilson, who lived at Pascagoula, and lived near her from the year 1809 to the year 1823; the general repute among the neighbors was, that she was not married to the said Joseph Collins; I never knew of their ever being married.

To the third interrogatory he answers: I knew the two children of the said Elizabeth Wilson, named George Emily Collins and Sidney Collins, the reputed children of the said Joseph E. Collins; I cannot state the time when they were born, but George Emily Collins was about two or three years old when I first knew his reputed father, Joseph E. Collins; my first acquaintance with Sidney Collins was some time in the year 1809, but am unable to say in what year he was born.

To the fourth interrogatory he answers: I do not know what the ordinary or customary mode of marrying in the Spanish times was; I do not recollect of ever seeing a priest in this country from the year 1809 to the year 1812; I do not know what was necessary to make a mar-

riage lawful or binding; I know not whether their services could have been obtained or not.

To the fifth interrogatory he answers: I know nothing about the contract marriage in the Spanish times, the settlement was a very thin one.

To the sixth interrogatory: I know nothing material to the matters in issue between the parties, nor to the subject of controversy; as to the matters in evidence, to which I have been interrogated, are fully answered in the five preceding interrogatories.

ALLEN GODWIN.

Subscribed and sworn to, this 8th day of March, 1845, before me.

WILLIAM LEWIS, *Com'r.*

Cross interrogatories.

To the first cross interrogatory he answers: I did visit at the house of Joseph E. Collins, at Pascagola, after his connexion with Elizabeth Wilson; he called her Betsy; I do not know of her being called Mrs. Collins; the said Collins did not address her as his wife; the children bore the name of Collins; when I had occasion to speak to her I called her Betsey; I never eat at the house of the said Collins, but Betsey Wilson managed the household affairs.

To the second cross interrogatory he answers: I do not know where Elizabeth Wilson resided before her connexion with Collins; I was acquainted with the three reputed children of the parties, named George Emily Collins, Sidney Collins, and Joseph Collins; I knew not when either of them died, neither do I know whether any of them were married or not.

ALLEN GOODWIN.

Subscribed and sworn to, this the 8th day of March, 1845, before me.

WILLIAM LEWIS, *Com'r.*

Interrogatories to be propounded to Jackson Ryan, Mrs. Catharine Goodin, wife of Allen Goodwin, Mrs. Goodwin, wife of Benjamin C. Goodwin, Louis A. Caillavet, Mrs. Margaret Caillavet, material witnesses for the defendant, in a certain suit pending in the U. S. circuit court at Mobile, in which Sidney E. Collins is plaintiff, and W. R. Hallett and R. L. Walker, executors of Joshua Kennedy, James Campbell, the Branch Bank at Mobile, the heirs of Joshua Kennedy, and others, are defendants.

1. Were you acquainted with Joseph Collins, a surveyor under the Spanish government, who lived at Pascagola previous to 1811; when and where did you know him?

2 Were you acquainted with a woman named Betsey or Elizabeth Wilson, who also lived at Pascagola, and who intermarried with one Benjamin Lanier about the year 1812 or '13; where and when, and for what length of time, were you acquainted with her; where did you live during the time of your acquaintance with said Collins and said Miss Wilson?

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3. State if at any time [you] had any conversation or conversations with the said Elizabeth Wilson respecting the nature of her connexion with said Collins. If yea, when and where did these conversations take place; did she, in said conversations, pretend that she was or had been the wife of said Joseph Collins, or did she admit that she never had been, nor had considered herself, the wife of said Collins, or that said Collins had never considered or regarded her as his wife; did she state that she and said Collins never had been married in any way; did she make these statements frequently, and how often; what did she say in relation to her connexion with the said Joseph Collins? Give all the particulars of said conversation or statement as far as you can remember them.

4. Did the said Joseph Collins admit to you, or in your presence, that he was never married to said Elizabeth Wilson, or that he did not regard her as his wife; have you heard said Joseph Collins to speak or admit more than once; and, if so, how often?

5. When was Sidney Collins, the son of said Miss Wilson, born; who were his godfather and godmother; what priest christened him; and what was Sidney's age at the time of the death of said Collins; what was the age of the child, Joseph Collins, a younger son of said Miss Wilson, at the time of the death of Joseph Collins, sen'r?

6. Were you acquainted with the law and the custom of marrying which prevailed and were observed in West Florida during the Spanish time up to the year 1812? If so, state what was the common mode of contracting marriages in that country during the continuance of the Spanish government, and what by the citizens deemed indispensable to make a marriage; was it for such purpose deemed indispensable that a priest should perform the marriage ceremony?

7. Did Catholic priests visit Pascagola from 1800 to 1812; did they visit there frequently; for what purpose; was there any difficulty at Pascagola during the times spoken of in getting a priest to perform the marriage ceremony?

8. If you know or can set forth any thing material to the matters in issue between the parties, as to the questions in contest in this case, or the matters of evidence as to which you have been interrogated, set forth the same fully and at large in your answer.

STEWART & EASTON,
For defendants.

Endorsed: Interrogatories for Jackson Ryan et al., filed March 17, 1847.

JOHN FITTS, *Clerk.*

Deposition of Mrs. Catharine Goodin, taken before me, William Lewis, the undersigned commissioner, in pursuance of a commission issued from the honorable the circuit court of the U. S. for the southern district of Alabama, in the case of Sidney E. Collins vs. Wm. R. Hallett and R. L. Walker, executors of Joshua Kennedy, deceased, and others.

The said Catharine Goodin being called and caused to come before me, at her residence, in the county of Mobile, and State of Alabama, this first day of April, one thousand eight hundred and forty-five, and being duly sworn, according to law, on the holy evangelist of Almighty God, and the interrogatories hereto *answered* being distinctly read over and propounded to her, did thereto severally depose and make answers as follows, to wit:

To 1st interrogatory she answers: "I know nothing."

To the 2d interrogatory she answers: I was acquainted with a woman who lived at Pascagoula named Elizabeth Wilson, who was the wife of Benjamin Lanier; my first acquaintance with the said woman was at Pascagoula; my acquaintance continued with the said Elizabeth until she left Pascagoula; I have lived, since my first acquaintance with the said Elizabeth Wilson, partly in Alabama and partly in Mississippi.

To the third interrogatory she answers: I had a conversation with Mrs. Lanier, formerly known by the name of Elizabeth Wilson, respecting the nature of her connexion with Joseph E. Collins; the said conversation was some time in the year 1820 at Pascagoula, in her own house, and it ran thus: She was speaking of the ill treatment of Benjamin Lanier, and said "that she was very sorry that she had ever married said Lanier," "for if I (said she) was living with him in as loose a manner as I was living with Joseph E. Collins, I would quit living with him; for when I lived with Joseph E. Collins I was loose footed;" she never, in her conversation with me, pretended to call Joseph E. Collins her husband, or called herself his wife.

To the fourth interrogatory she answers that: "I know nothing."

To the fifth interrogatory she answers: "I know nothing."

To the sixth interrogatory she answers: "I know nothing."

To the seventh and eighth interrogatories she answers: I know nothing.

his
CATHARINE ✕ GOODIN.
mark.

Subscribed and sworn to, this 1st day of April, 1845, before me.
WILLIAM LEWIS, *Com'r.*

Deposition of Louis A. Callivet, taken before me, William Lewis, the undersigned commissioner, pursuant to a commission issued from the honorable circuit court of the U. S. for the southern district of Alabama, and in the case of Sidney E. Collins vs. Wm. R. Hallett and Robert L. Walker, executors of the last will and testament of Joshua Kennedy, dec'd, and others.

The said Louis A. Callivet being called and caused to come before me, at his residence, in the county of Harrison, and State of Mississippi, this the 3d day of April, 1845, and being duly sworn, according to law, on the holy evangelist of Almighty God, and the interrogatories hereto *answered* being distinctly read over to him, and propounded to him, did thereto depose and say, and make answer, as follows, to wit:

To the 1st interrogatory he answers: That I was acquainted with Joseph E. Collins, a surveyor under the Spanish government; my first acquaintance with him was in the latter part of August, 1809, at Pascagoula.

To the 2d interrogatory he answers: I was acquainted with a woman named Betsey Wilson, who lived at Pascagoula, who also married with Benjamin Lanier in the spring of 1812; my first acquaintance with the said Betsey Wilson was at Pascagoula, in the latter part of August, 1809; my acquaintance continued with the said Betsey Wilson from August, 1809, to some time after the year 1820; I lived at Pascagoula during my acquaintance with the said Betsey Wilson and Joseph E. Collins.

3d. To the third interrogatory he answers: I know nothing.

4. To the 4th interrogatory he answers: I know nothing.

5. To the 5th interrogatory he answers: Sidney E. Collins, the son of Betsey Wilson, was born some time *some time* in September, 1809; Jackson Ryan was godfather, and Margaret Callivet was godmother for Sidney E. Collins; Leline was the priest that christened him; the remainder of the questions asked in this interrogatory I am unable to answer.

To the sixth interrogatory he answers: I was acquainted with the law and the custom of marrying which prevailed and were observed in West Florida, during the Spanish times, up to 1811; the common and only mode of contracting marriages in this country during the Spanish times was, when two agreed to take each other for life, a priest was to perform the marriage ceremony in order to make it lawful and binding, for there was no other mode of contracting marriages in this country at the time above stated that was recognised by the citizens of said country as being valid.

To the 7th interrogatory he answers: Catholic priests did visit Pascagoula from 1807 to 1812 to my knowledge; they visited here frequently for the purpose of marrying those that wanted to get married, and to christen children; there was no difficulty in getting a priest at the time above stated at Pascagoula for to perform a marriage ceremony.

To the 8th interrogatory he answers: That I know nothing material to the matters in issue between the parties; as to the matters of evidence to which I have been interrogated, are fully stated in the seven preceding interrogatories. L. A. CAILLEVETT.

Subscribed and sworn to, this 3d day of April, 1845.

WILLIAM LEWIS, *Com'r.*

Notice.

CIRCUIT COURT OF THE UNITED STATES,
Southern district of Alabama:

SIDNEY E. COLLINS,
vs.
WM. R. HALLETT & ROBERT L. WALKER,
Executors of J. Kennedy, and others.

The plaintiff is notified to produce on the trial of said cause the originals of two deeds of sale of certain lands therein specified, made by Joseph Collins to Elizabeth Wilson, dated Pascagoula, June 13th, 1811, one for the consideration of two hundred dollars, the other for the consideration of six hundred and ten dollars; also, all other deeds made by Joseph Collins to Elizabeth Wilson, in the month of June, 1811.

STEWART & EASTON,
For the defendants.

Mobile, March 28, 1845, service acknowledged,
CAMPBELL & CHANDLER,
For plaintiff.

Deed from Joseph Collins to Elizabeth Wilson.

PASCAGOULA, *West Florida:*

This indenture, made this 12th day of June, eighteen hundred and eleven, between Joseph Collins and Elizabeth Wilson, witnesseth, that for and in consideration of two hundred dollars to me in hand paid, the receipt of which is hereby acknowledged, have bargained, sold, and conveyed unto said Elizabeth several tracts of land and lots, lying on the northwest of the river Ohio, to wit: one tract, of the quantity and boundaries of which is not remembered, which is in care of Mr. Wallace, of the town of Marietta, lying at or near the town of Marietta; another tract of one hundred acres, more or less, near Chillicothe, in the care of Doctor Sulman, of Cincinnati, and several other lots; to have and hold said land and lots to said Elizabeth, her heirs and assigns forever, together with all the appurtenances thereto in anywise appertaining; and whereas it is not in my power to state in this deed of conveyance the exact situation and boundaries of said lands and lots for want of a proper knowledge, it is my full intention and meaning, by this deed, to convey to the said Elizabeth all the land and lots, wherever situated, on the northwest of the river Ohio, as fully and amply, of all my rights, titles, and interest thereto, as if every tract and lot was particularly described by situation and boundary, to all and every tract or lot of land to which I have any right, title, or interest in, lying on the said northwest side of the river Ohio, to have and to hold the same unto said Elizabeth, her heirs and assigns, in as full and ample a manner, to all intents and purposes, as I myself could do, and as if every separate tract or lot was separately described as to situation and boundaries, with full power in her own name, and for her own use and benefit, to ascertain the premises aforesaid, and by herself, or attorney, to take possession of and enjoy said land and lots, and every parcel thereof, all the rights, privileges, and advantages thereto belonging, for her sole use and benefit, in as full and ample manner as I myself could do before this sale, to all and every intent.

Given under my hand and seal this day afore written.

JOSEPH COLLINS. [SEAL.]

In presence of—
E. LEWIS,
MARGURETTE L. BAUDREAU.

Recorded, April 24th 1819.

PASCAGOULA, *June 12th, eighteen hundred and eleven.*

Know all men by these presents, that I, Joseph Collins, of this place, for and in consideration of the sum of six hundred and ten dollars, to me in hand paid before the sealing and delivering of these presents, by Elizabeth Wilson, the receipt of which is hereby acknowledged, have bargained, sold, and delivered, and by these presents do bargain, sell, and convey, unto the said Elizabeth Wilson, her heirs and assigns, the following tracts of land, seventeen hundred and eighty acres, beginning opposite, or nearly opposite, Gordon's Bluff, on the west side of the river Pascagoula, about six leagues from the mouth of the river, and running up the river for complement, it being two tracts surveyed under an order of survey granted by Manuel Gayoso to Gerard Birnie, dated New Orleans, 19th November, 1798; also six hundred and twenty-three acres on the east side of said river, including Gordon's and Dupruy's Bluff, and one hundred and sixty-six acres, including Choctaw point, near Mr. Cambert place, and ninety-five acres adjoining Dr. White's place, near the mouth of the river, and bound on the north by the said Dr. White's, which three latter surveys were made under and by virtue of an order of survey granted by Dn. Manuel Gayoso to Thomas Byrne, for sixteen hundred acres of land, dated New Orleans, 19th Nov., 1798; which orders of survey were sold by said Gerard Birnie and Thomas Birnie unto Antoine Espezo, and transferred from said Espezo to me, the said Joseph Collins, according to said orders of survey, and the plats and other vouchers hereto annexed; to have and to hold the said lands and titles, and all other land which may be claimed under said titles to make up the full quantity contained in said orders of survey, unto the said Elizabeth, her heirs, executors, administrators and assigns, to her sole use and benefit forever; fully conveying and confirming by these presents the said lands and titles, to be holden by the said Elizabeth, her heirs and assigns forever, against me, my heirs, executors, administrators and assigns, in as full and ample a manner, to all intents and purposes, as I, the said Joseph Collins, have or could hold to the same, with full power to demand and prosecute in her own name, and for her own use and behoof, all the titles aforesaid, to perfect the same, according to the laws by which they may be governed.

In testimony of which I have hereunto set my hand and seal, the day and place above written. JOS. COLLINS. [SEAL.]

In presence of—
E. LEWIS,
MARGURETTE L. BAUDREAU.

THE STATE OF MISSISSIPPI, *Jackson county:*

I, Samuel Davis, clerk of the probate court of the county and State aforesaid, do hereby certify, that the two foregoing deeds, from Joseph Collins to Elizabeth Wilson, is a full, complete, and true copy of the records now in my office.

In witness whereof I hereunto set my hand and affix my seal of office, this first day of February, A. D. eighteen hundred and forty-five. SAML. DAVIS, *Clerk, &c.*

Record of Supreme Court.

ROBERTSON & BARNEWELL,
vs.
KENNEDY & KITCHEN.

THE STATE OF ALABAMA,
Clerk's office, supreme court:

Be it remembered that, on the fifth day of July, A. D. one thousand eight hundred and twenty-six, there was filed, in the clerk's office of the supreme court, a writ of error and transcript of record, in words and figures as follows, to wit:

THE STATE OF ALABAMA, *Mobile county, ss:*

To the clerk of the circuit court of said county, greeting:

Because, in the record and proceedings, and also in the giving judgment on the plaint, which was lately in the said circuit court, between Robinson and Barnewell, plaintiffs, and Joshua Kennedy and Samuel Kitchen, defendants, of a certain plea of trespass to try titles, wherein the said Robertson and Barnewall were plaintiffs, and the said Joshua Kennedy and Samuel Kitchen defendants, manifest error hath intervened to the great damage of the said plaintiffs, as we from their complaint are informed; we, willing that the error, if any there be, should be corrected in due manner, and that full and speedy justice should be done the parties aforesaid in this behalf, do command you that, if judgment thereof be given, then, under your seal, you do distinctly and openly send the record and proceedings of the plaint aforesaid, with all things concerning them, and this writ, so that the supreme court of the State aforesaid may have them on the first Monday of July next, at the town of Tuscaloosa, in the aforesaid State; that the record and proceedings aforesaid being inspected, the said supreme court may do thereupon, for correcting that error, what of right and according to the law and custom of the land ought to be done.

Witness John F. Everett, clerk of the circuit court aforesaid, this twenty-fourth day of June, in the year of our Lord one thousand eight hundred and twenty-six. Issued this 24th day of June, 1826.

Attest: JNO. F. EVERETT, *Clerk.*

The State of Alabama, to the sheriff of Mobile county, greeting:

You are hereby commanded to make known unto Joshua Kennedy and Samuel Kitchen, or to John Elliott and Chester Root, their attorneys of record of your county, if to be found therein, that they be and appear before the honorable the *the* judges of the supreme court of said State, at the next term of said court, to be holden in the town of Tuscaloosa, on the first Monday of July next, then and there to answer to a writ of error, brought by William H. Robertson and William Barnewell, against them, said Joshua Kennedy and Samuel Kitchen, on a judgment obtained against them, the said Robertson and Barnewell, at

the May term, 1826, of the circuit court for Mobile county, for costs, and in favor of the said Kennedy and Kitchens. Herein fail not, and have you then and there this writ.

Witness John F. Everitt, clerk of the said court, this 13th day of June, A. D. 1826. Issued the 13th day of June, A. D. 1826.

Attest: JNO. F. EVERITT, *Clerk*.

Received 13th June, 1826, and made known to John Elliott, esq., attorney for plaintiff, 16 June, 1826.

JAMES P. BATES, *Sh'ff M. C.*
By his deputy, A. W. HARRELL.

Bill of Exceptions.

W. H. ROBERTSON and WILLIAM BARNEWALL,
vs.
JOSHUA KENNEDY and SAMUEL KITCHEN.

On the trial of this cause the plaintiff offered in evidence, to support the issue joined on their part, a deed, the copy whereof is hereto annexed, (marked A;) whereupon the defendants, by their counsel, objected to the admission of the said deed in evidence to support the issue aforesaid, and the court sustained the said objection; and thereupon the said plaintiffs, by their attorney, excepted to the opinion of the court in sustaining the said objection, and prayed the said court to sign and seal this his bill of exceptions, which is accordingly done.

(Signed) ABNER S. LIPSCOMBE. [SEAL.]

A.

To all people to whom these presents shall come, I, Addin Lewis, mayor of the city of Mobile, send greeting:

Whereas, by an act of the General Assembly of the State of Alabama, entitled "An act to incorporate the city of Mobile, passed the seventeenth day of December, in the year of our Lord one thousand eight hundred and nineteen," the mayor and aldermen of the city of Mobile, by the ninth section of the above entitled act, are empowered to lay taxes on both the personal and real estate within the city; and whereas the mayor and aldermen of said city, in pursuance of the powers in them vested, and in conformity to the provisions of the section of the said act, did, on the twenty-eighth day of March, in the year of our Lord one thousand eight hundred and twenty, levy taxes on the real estate within said city, and the taxes so laid on a lot or parcel of marsh land, as the property of the heirs of Joseph Collins, deceased, situate in the city of Mobile, at the corner of Royal street and Saint Louis street, and running thirty-two perches on Royal street, and bounded on the north by a plantation formerly belonging to Panton, Leslie & Co., but now belonging to John Forbes & Co., called Poplar Grove, on the south by St. Louis street, on the east by Mobile river, and on the west by Royal street aforesaid, containing about , according to the map thereof on record in the land office, not having been paid by said

heirs, nor by any person for them, to the collector of the said city, within ten days after the delivery of the tax list to the said collector, as required by law; and a descriptive list of the real estate, together with the names of the owners thereof, as well as the valuation of said real estate, together with the taxes assessed thereon, having been published for the space of two months in the Mobile Gazette and General Advertiser, printed within the limits of the city of Mobile; and the said taxes, at the expiration of the said two months, remaining still unpaid, and the same being thereupon returned by the said collector to the clerk of the corporation, and the mayor of the said corporation having given public notice for the space of one month, by publication in the Mobile Gazette and General Advertiser, printed within the limits of the city of Mobile, that the said real estate, or so much thereof as would be necessary to satisfy the taxes so remaining unpaid, would be sold at public auction, on the tenth day of January, in the year of our Lord one thousand eight hundred and twenty one, to the highest bidder, to satisfy the said taxes; and whereas, on the tenth day of January, in the year aforesaid, agreeably to said notice, the said real estate was set up at public auction, in the city of Mobile, at the house where the corporation of said city holds its meetings, and was sold to William H. Robertson and William Barnewell, and for the sum of sixty-five dollars, which was the highest sum bid for the same at the said sale: Now, know ye, that, pursuant to the power and authority in me vested by the said ninth section of the said recited act, and not otherwise, and in consideration of the said sum of sixty-five dollars, inclusive of the sum of eight dollars, which was the amount of the taxes assessed and due thereon, paid by the said William H. Robertson and William Barnewell, the receipt whereof is hereby acknowledged, I, Addin Lewis, mayor of said city of Mobile, do hereby grant, bargain, sell, and convey, unto the said William H. Robertson and William Barnewell, their heirs and assigns, the said lot or parcel of marshy land, herein before particularly described, bounded on the north by a plantation or tract of land belonging to John Forbes & Co., called "Poplar Grove," on the south by Saint Louis street, on the east by Mobile river, and on the west by Royal street, containing , by calculations made according to the map on record in the land office, together with all the privileges and appurtenances thereunto belonging or in anywise appertaining. To have and to hold the said lot or parcel of land, with all and singular the privileges and appurtenances thereof, to the said William H. Robertson and William Barnewell, their heirs and assigns, to their use and behoof, forever.

In testimony whereof I have hereunto set my hand, as mayor of the city aforesaid, and affixed the seal of the corporation of said city, this thirtieth day of April, in the year of our Lord one thousand eight hundred and twenty-one.

ADDIN LEWIS, *Mayor.*

[Place of the seal.]

Signed, sealed, and delivered in presence of—

STATE OF ALABAMA, *Mobile county, ss:*

Personally appeared before me, Edward Hall, one of the justices of the quorum for the county aforesaid, Addin Lewis, esquire, mayor of the city of Mobile, in the county aforesaid, who acknowledged that he signed, sealed, and delivered the foregoing deed to the therein mentioned William H. Robertson and William Barnewall, on the day and year therein mentioned.

Given under my hand and seal, at the city of Mobile, this 30th day of April, in the year 1821.

Signed EDWARD HALL, *J. C. C.* [SEAL.]

Pleas before the honorable Abner S. Lipscomb, judge of the first judicial circuit of the State of Alabama, holden in the county of Mobile, in said State, at the place of holding said court in said county, on the fourth Monday of May, in the year of our Lord one thousand eight hundred and twenty-six.

Be it remembered, that heretofore, to wit, on the twenty-third day of January, in the year of our Lord one thousand eight hundred and twenty-six, William H. Robertson and William Barnewall sued out of the clerk's office of the circuit court of the aforesaid county of Mobile their writ, which said writ is in the words and figures following, to wit:

The State of Alabama, to the sheriff of Mobile county, greeting:

You are hereby commanded to take the body of Joshua Kennedy, if to be found in your county, and him safely keep, so that you may have him before the honorable the circuit court, to be holden for Mobile county, at the place of holding said court, on the second Monday of February next, to answer unto William H. Robertson and William Barnewall, in a plea of trespass, to his damage five thousand dollars; herein fail not, and have you then and there this writ. Witness, John F. Everitt, clerk of the said court, this twenty-third day of January, in the year of our Lord one thousand eight hundred and twenty-six, and of the independence of the United States the fiftieth year.

Issued the 23d day of January, in the year 1826.

Attest, JOHN. F. EVERITT, *Clerk.*

On which said writ is written the endorsement following, to wit:

This is an action of trespass, brought by the plaintiffs to recover from the defendant the possession of a parcel or lot of land of the following description, to wit, situate in the city of Mobile, at the corner of Royal street, and bounded on and running thirty-two perches on Royal street, and bounded on the north by a plantation formerly belonging to Panton, Leslie & Co., called "Poplar Grove;" on the south by Saint Louis street, on the east by Mobile river, and on the west by Royal street; as also to try titles to the said premises above described.

Attest, SAMUEL AIRE,
Attorney for plaintiff.

And on which said writ the sheriff of the county of Mobile afterwards, to wit, on twenty-fifth day of January, in the year of our Lord

one thousand eight hundred and twenty-six, made his return in the words and figures following, to wit:

Received and executed, January 25th, 1826.

JAMES P. BATES,
Sheriff, M. C.

And afterwards, to wit, on the twenty-fifth day of March, in the year of our Lord one thousand eight hundred and twenty-six, came the said plaintiffs by their aforesaid attorney, and filed their declaration in the words and figures following, to wit:

THE STATE OF ALABAMA, *Mobile county.*

Circuit court, of the term held on the second Monday of February, 1826.

Wm. H. Robertson and Wm. Barnewall complain of Joshua Kennedy, in custody, &c., of a plea of trespass with force and arms, for that the said defendant, on the first day of January, in the year of our Lord one thousand eight hundred and twenty-six, with force and arms, broke and entered into a certain lot or parcel of land of the said William H. Robertson and William Barnewell, lying and being in the county of Mobile, and situated in the city of Mobile, at the corner of Royal street and Saint Louis streets, and bounded and running thirty-two perches on Royal street, and bounded on the north by a plantation formerly belonging to Panton, Leslie & Co., but now to John John Forbes & Co., called the Poplar Grove; on the south by Saint Louis street, on the east by Mobile river, and on the west by Royal street, of which the said William H. Robinson and William Barnewell were siezed in their demesne as of fee, and then and there disseized, ejected, expelled, put out, and removed the said Wm. H. Robinson and Wm. Barnewell from the possession, use, occupation and enjoyment of the said lot or parcel of land, and kept and continued them so jected, expelled, put out, and removed, for a long space of time, to wit, from thence hitherto, whereby the said plaintiffs, for and during all that time, lost and were deprived of the use and benefit of their said land, to wit, at the county aforesaid; and other wrongs to the said plaintiffs then and there did, against the peace of the State, and to the damage of the said plaintiffs five thousand dollars; therefore they bring suit.

SAMUEL AIRE,
Attorney for Plaintiffs.

And afterwards, to wit, on the first day of April, in the year of our Lord one thousand eight hundred and twenty-six, came the said defendant, by his attorney, and filed his plea, in the words and figures, to wit:

STATE OF ALABAMA, *county of Mobile, ss:*

Circuit court of law, February especial term, 1826, of said court.

WILLIAM H. ROBERTSON and Wm. Barnewall,
vs.
JOSHUA KENNEDY.

And the said defendant, by his attorney, comes and defends the force and injury, when and where, &c., and for plea, saith, that he is not

guilty of the aforesaid trespass above laid to his charge, in manner and form as the said plaintiffs have thereof declared against him, and of this he puts himself upon the country.

JOHN ELLIOTT & CHRIST'N ROOT,
Attorneys for Defendant.

Circuit Court, Mobile county, April term, 1826.

The time allowed by law being insufficient to dispose of the necessary business in court, it is ordered, that an intermediate term of the circuit court of Mobile county be holden, at the place of holding said court in said county, on the fourth Monday of May next, to which time all suits and causes not otherwise disposed of are continued. And it is further ordered that the clerk give notice thereof in the Mobile Commercial Register.

Circuit Court, Mobile county, May term, 1826.

WM. H. ROBERTSON & WM. Barnewall
vs.
JOSHUA KENNEDY.
} Trespass to try titles.

Samuel Kitchen comes into court and makes himself a party, and acknowledges himself in possession of the premises. Then came the parties by their attorneys, and came also a jury of good and lawful men, to wit, Michael Dimotte, Thomas Wenthers, Sifroy Dolive, Edmund Freeman, Willis Roberts, John Cline, James W. Roper, John W. Ward, William D. Stone, Richard Timkersley, Thomas G. Newbold, and John F. Crawford, who being elected, tried, and sworn the truth to speak of the issue joined between the parties aforesaid, upon their oaths do say, that the said defendants are not guilty of the aforesaid trespass, in the declaration of the said plaintiffs mentioned, in manner and form as they have thereof declared against the said defendants. Therefore, it is considered by the court now here, that the said defendants go hence without day, and that they do recover against the said plaintiffs their costs by them about their said defence in this behalf expended.

STATE OF ALABAMA, *Mobile county, ss:*

I, John F. Everitt, clerk of the circuit court, in and for the aforesaid county of Mobile, in the State aforesaid, do hereby certify, that the foregoing is a complete transcript from the records and proceedings had in the cause therein named.

Given under my hand and private seal, (having no seal of office,) at my office in the city of Mobile, this twenty-fourth day of June, in the year of our Lord one thousand eight hundred and twenty-six.

JOHN F. EVERITT, *C. C. M. C.* [L. S.]

And on the third day of the July term of the supreme court, anno domini one thousand eight hundred and twenty-six, came the plaintiffs in error by their attorney, and filed their assignment of errors as follows, to wit:

ROBERTSON & BARNEWELL,
vs.
KENNEDY & KITCHEN.

And now, to wit, the first Monday of July, in the year 1826, came the plaintiffs by their attorney, Samuel Aire, and say that there is error in the record and procedings aforesaid, in this, to wit: first, that the court erred in the several matters and things specified in the bill of exceptions in the said record and proceedings contained.

SAMUEL AIRE,
Attorney for Plaintiffs.

There is no error in the record.

BENTON,
For Defendants in error.

And on the 20th day of July, being a day of the July term of the supreme court, one thousand eight hundred and twenty seven, to which term the said cause had been continued; present, the honorable Abner S. Lipscomb, chief justice, hon. Reuben Saffold, hon. Anderson Crenshaw, hon. John Gale, and the hon. John White, associate judges, the following judgment was rendered:

ROBERTSON & BARNEWALL,
vs.
KENNEDY & KITCHEN. } In error, Mobile.

Now, this day came the parties by their attorneys, and the record proceedings and judgment of the court below, and the matters by said plaintiffs for error assigned, being examined, it seems to the court that in said record proceedings and judgment there is manifest error; it is therefore considered by the court here that the judgment of the court below be reversed, that the cause be remanded to the court below for further proceedings, and that said plaintiffs recover of said Joshua Kennedy and Samuel Kitchens the costs which have accrued in this court. In this case Judge Lipscomb did not sit.

Certificate issued 24th July.

I, James B. Wallace, clerk of the supreme court of the State of Alabama, do hereby certify, that the foregoing is a complete transcript of the record and judgment in the case therein stated, the original of which is on file and remains of record in my office. In testimony whereof I have hereunto set my hand, and caused the seal of the court to be affixed, at [my] office at the capitol, this twenty-ninth day of March, in the year of our Lord one thousand eight hundred and forty-five.

JAMES B. WALLACE,
Clerk Supreme Court, Alabama.

STATE OF ALABAMA, *Mobile county:*

Pleas before the honorable Abner S. Lipscomb, judge of the circuit court for Mobile county and State of Alabama, at a term thereof holden in and for said county on the fourth Monday after the fourth Monday of October, in the year of our Lord one thousand eight hundred and thirty.

The State of Alabama, to the sheriff of Mobile county, greeting:

You are hereby commanded to take the body of Joshua Kennedy, if to be found in your county, and him safely keep, so that you may have him before the honorable the circuit court, to be holden for Mobile county, at the place of holding said court, on the second Monday of February next, to answer unto William H. Robertson and William Barnwell in a plea of trespass to his damage five thousand dollars. Herein fail not, and have you then and there this writ.

Witness John F. Everitt, clerk of the said county, this twenty-third day of January, in the year of our Lord one thousand eight hundred and twenty-six, and of the independence of the United States the fiftieth year. Issued this 23d day of January, in the year 1826.

JOHN F. EVERITT, *Clerk.*

This is an action of trespass brought by the plaintiff to recover from the defendant the possession of a parcel or lot of land of the following description, to wit: Situate in the city of Mobile, at the corner of Royal street, and bounded on and running thirty-two perches on Royal street; and bounded on the north by a plantation formerly belonging to Panton, Leslie & Co., but now to John Forbes & Co., called "Poplar Grove," on the south by St. Louis street, on the east by Mobile river, and on the west by Royal street; as also to try titles to said premises above described.

Attest: SAMUEL ACRE,
Atty. for Plff.

Received and executed January 25th, 1826.

JAMES P. BATES, *Shff. M. C.*

THE STATE OF ALABAMA, *Mobile county:*

Circuit court of the term held on the 2nd Monday of February, 1826.

William H. Robertson and William Barnwell complain of Joshua Kennedy, in custody, &c., of a plea of trespass with force and arms, for that the said defendant, on the first day of January, in the year one thousand eight hundred and twenty-six, with force and arms, broke and entered into a certain lot or parcel of land of the said William H. Robinson and William Barnwell, lying and being in the county of Mobile, and situate in the city of Mobile, at the corner of Royal street and St. Louis street, and bounded and running thirty-two perches on Royal street, and bounded on the north by a plantation formerly belonging to Panton, Leslie & Co., but now to John Forbes & Co., called the Poplar Grove, on the south by St. Louis street, on the east by Mobile river, and on the west by Royal street, of which the said William H. Robinson and William Barnwell were seized in their demesne as of fee, and then and there disseized, and ejected, and expelled, put out, and removed the said William H. Robinson and the said William Barnwell from the possession, use, and occupation, and enjoyment of the said lot or parcel of land, and kept and continued them *them* so ejected, expelled, put out, and removed, for a long space of time, to wit, from thence hitherto, whereby the said plaintiffs, for and during all that time, lost

and were deprived of the use and benefit of their said lands, to wit, at the county aforesaid; and other wrongs to the said plaintiffs then and there did, against the peace of the State, and to the damage of the said plaintiffs five thousand dollars; and therefore they bring suit.

SAMUEL ACRE,
Atty. for Plffs.

Filed this 25th March, 1826.

JOHN F. EVERITT, *Clerk.*

STATE OF ALABAMA, *County of Mobile:*

Circuit court of law, February special term of 1826, of said court.

WILLIAM H. ROBERTSON and WILLIAM BARNWELL
vs.
JOSHUA KENNEDY.

And the said defendant, by his attorneys, comes and defends the force and injury, when and where, of and for plea saith, that he is not guilty of the aforesaid trespass, above laid to his charge, in manner and form as the said plaintiffs have thereof declared against him; and of this he puts himself upon the country.

JOHN ELLIOT & CHESTER ROOT,
Attys. for Defendant.

Filed 1st April, 1826.

JOHN F. EVERITT, *Clerk.*

And on the twenty-fifth day of May, 1826, being a day of the April term, 1826, the following judgment was rendered, to wit:

WILLIAM H. ROBERTSON and WILLIAM BARNWELL
vs.
JOSHUA KENNEDY.

Trespass to try titles.

Samuel Kitchen comes into court, makes himself a party, and acknowledges himself in possession of the premises. Then came the parties by their attorneys, and came also a jury of good and lawful men, to wit, Michael Demott, Thomas Weathers, Lefory Dolive, Edmond Freeman, Willis Roberts, John Cline, James W. Roper, John W. Ward, William D. Storm, Richard Tankersly, Thomas G. Newbold, John P. Crawford, who being elected and sworn the truth to speak of the issue joined between the parties aforesaid, upon their oaths do say, that the said defendants are not guilty of the aforesaid trespass, in the declaration of the plaintiffs mentioned, in manner and form as they have thereof declared against the said defendant. Therefore, it is considered by the court now here, that the said defendants go hence without day, and that they do recover against the said plaintiffs their costs by them about their said defence in this behalf expended.

Fi. fa. for costs, issued 13th June, 1826.

And on Saturday, the 11th day of December, 1830, being a day of the said fall term, 1830, the following judgment was entered up:

WILLIAM H. ROBERTSON and WILLIAM BARNWELL
vs.
SAMUEL KITCHEN.

Action of trespass to try titles, &c.

This day came the said parties anew by their attorneys, and thereupon came a jury, to wit, Lewis Gueringer, James Williams, James Moreland, Samuel G. Swift, Antoine Espego, Samuel Stibbins, William Ledyard, Chandler Waldo, John Campbell, Joseph Curran, Stephen Swain, and John B. Hover, who being sworn to try the issue joined between the parties, upon their oaths do say: we, the jury, find that the defendant is not guilty in manner and form as charged in the plaintiffs' declaration. It is therefore considered by the court, that the said defendant go hence, that the said plaintiffs take nothing by their suit, and that the said plaintiffs pay all the costs of this suit, for which execution may issue.

Fi. fa. issued for costs 21st January, 1831.

November term, 1830, 3d Monday of the term, verdict for the defendant.

ROBINSON & BARNWELL
vs.
KITCHENS, JOSHUA KENNEDY.

Copies of subpœnas.

STATE OF ALABAMA, *Mobile county:*

To the sheriff of said county, greeting:

You are hereby commanded to summon A. W. Gordon, if he be found within your county, at the instance of the defendant, to be and appear before the honorable the judge of the circuit court, to be holden in and for said county of Mobile, at the court-house thereof, instanter then and there to testify and the truth to say in a certain cause pending, wherein Robinson and Barnwell are plaintiffs, and Joshua Kennedy is defendant; herein fail [not,] and have you then and there this writ.

Witness John F. Everitt, clerk of the court aforesaid, the twenty-third day of May, 1826.

JOHN F. EVERITT, *Clerk.*

Received and executed the 23d day of May, 1826.

JAMES A. BATES, *Sheriff.*
By his deputy C. A. HENRY.
(14th November, 1829.)

THE STATE OF ALABAMA, *Mobile county:*

To the sheriff of Mobile county, greeting:

You are hereby commanded to summon Edward Hall and Robert Dade, if to be found within your county, at the instance of the plaintiff, to be and appear before the honorable the judge of the circuit court, to be held in and for said county of Mobile, at the court-house thereof,

on the third Monday after the fourth Monday of November, 1829, then and there to testify, and the truth to say, in a certain cause pending, wherein Robertson and Barnwell are plaintiffs, and Joshua Kennedy is defendant; herein fail not, and have you then and there this writ.

Witness Arnet W. Harrell, clerk of the court aforesaid, the 14th day November, A. D. 1829.

Issued 14th November, A. D. 1829.

J. G. LYON, *Clerk.*

Received on the 14th, and executed on the 17th November, 1829.

T. L. TOULMIN, *Sheriff M. C.*

Same term.

THE STATE OF ALABAMA, *Mobile county:*

To the sheriff of Mobile county, greeting:

You are hereby commanded to summon A. W. Gordon, if to be found within your county, at the instance of the defendant, to be and appear instanter before the honorable judge of the circuit court for said county of Mobile, now in session at the court-house thereof, then and there to testify and the truth to say in a certain cause pending, wherein Robertson and Barnwell are plaintiffs, and Kennedy and Kitchen are defendants; herein fail not, and have you then there this writ.

Witness James G. Lyon, clerk of the circuit court aforesaid, the 23d day of November, 1829.

Issued 23d day of November, 1829.

JAMES G. LYON, *Clerk.*

Received and executed on the 23d November, 1829.

T. L. TOULMIN, *Sheriff M. C.*

April term, 1830.

THE STATE OF ALABAMA, *Mobile county.*

To the sheriff of Mobile county, greeting:

You are hereby commanded to summon Edward Hall, if he be found within your county, at the instance of the defendants, to be and appear before the honorable the judge of the circuit court, now in session in and for the said county of Mobile, at the court-house thereof, then and there to testify, and the truth to say, in a certain cause pending, wherein Robertson and Barnwell are plaintiffs, and Joshua Kennedy is defendant; herein fail not, and have you then and there this writ.

Witness James G. Lyon, clerk of the court aforesaid, the 20th day of April, 1830.

JAMES G. LYON, *Clerk.*

Received and executed the 20th day of April, A. D. 1830.

T. L. TOULMIN, *Sheriff M. C.*

STATE OF ALABAMA, *Mobile county:*

To the sheriff of Mobile county, greeting:

You are hereby commanded to summon Edward Hall and R. R. Dade, if to be found within your county, at the instance of the plaintiff, to be and appear [before] the honorable the judge of the circuit court, to be holden in and for said county of Mobile, at the court-house thereof, on the fourth Monday after the fourth Monday of March, 1830, then and there to testify, and the truth to say, in a cause pending, wherein Robertson and Barnwell are plaintiffs, and Joshua Kennedy is defendant; herein fail not, and have you then and there this writ.

Witness J. G. Lyon, clerk of the court aforesaid, the 30th day of April, A. D. 1830.

Issued 13th April, 1830. JAMES G. LYON, *Clerk.*

Received the 13th April, 1830, and executed the 16th April, 1830.
T. L. TOULMIN, *Sheriff M. C.*
By THOS. BATES, *Deputy Sheriff.*

The following is a copy of the envelope upon the original papers from which this transcript has been made:

WM. H. ROBERTSON AND WILLIAM BARNWELL
vs.
JOSHUA KENNEDY.

Fi. fa. for costs issued, 21st day of January, 1831.

I, Augustus Brooks, clerk of the circuit court for Mobile county and State of Alabama, do hereby certify, that the foregoing is a full and complete transcript of all the proceedings had in the above entitled case, as the same remains on file in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court, at my office, in the city of Mobile, this 22d day of March, A. D. 1845. A. BROOKS, *Clerk.*

To all persons to whom these presents may come, I, James Innerarity, of the city of Mobile, in the State of Alabama, send greeting:

Whereas, by decree of the circuit court of Mobile county, exercising chancery jurisdiction, holden at an adjourned term thereof at the court-house, on the seventh day of December, in the year of our Lord one thousand eight hundred and twenty-nine, all the real estate situate in the State of Alabama, standing in the name and style of John Forbes & Co., by whatever title or in whatever name the same might be held, was diverted out of the heirs and devisees of the said John Forbes, and was vested in me, the said James Innerarity, as acting surviving partner of the late firm of John Forbes & Co., for the benefit of the survivors of the said late firm, and of the heirs and devisees of said John Forbes, and of the creditors of the said late firm of John Forbes & Co. And whereas it was ordered, adjudged, and decreed by said court, that I should sell said real estate at public outcry, to the highest bidder, on

giving thirty days notice of the time and place of sale, in such parcels as I might deem most expedient for the interest of the said late firm, and of the creditors thereof. And whereas, in pursuance of the powers in me by the decree aforesaid vested, I did, on the fifth day of May, in the year of our Lord one thousand eight hundred and thirty-one, advertise a portion of said estate for public sale, having given thirty days notice of said sale in the Mobile Commercial Register, a newspaper printed in the city of Mobile. And whereas, on the said fifth day of May, in the year of our Lord one thousand eight hundred and thirty-one, agreeably to said advertisement, the said real estate, in a portion of not less than one-fourth thereof, as by said decree is ordered and adjudged, was set up at auction and public outcry, in the city of Mobile, before the door of the City hotel, (Quarles,) and two tracts of land in one lot, part, and parcel of the said real estate of the said firm of John Forbes & Co., of the following description and dimensions, to wit: A tract called Poplar (or Orange) Grove, containing in the whole two hundred and sixty-three English acres, or thereabouts, excepting therefrom about thirty to forty acres, more or less, on the west side, already released to the late William Fisher, bounded as follows, viz: on the south by the improved part of the city of Mobile and lands claimed by Joshua Kennedy and others; on the west by lands claimed by said Kennedy, and lands belonging to Genevieve Fisher and the heirs of William Fisher; on the north by lands believed to be vacant, and by the tract hereinafter described; and on the east by the river Mobile and a tract of land butting and bounding on the south by the aforementioned tract, a distance of one hundred French perches, and extending thence on parallel lines north four hundred French perches to or very near to the bayou Chateaugee, (or 3 mile creek,) containing three hundred and sixty acres and twenty-three hundredths parts; bounded on the south by the aforementioned tract, on the east and west by lands supposed to be vacant, and on the north by or very near to the bayou Chateaugee, containing both together five hundred and ninety-nine and thirty-one hundredths parts of an acre, according to a survey and map of said tracts of lands made by James Dowell, United States deputy surveyor, the 30th April, 1831, which is on record in the office of the clerk of the county court of Mobile county, were sold to John Bloodgood, Philip McLoskey, Jonathan Hunt, and Henry Hitchcock, for the sum of forty thousand dollars, which was the highest sum bid therefor at the said sale at public outcry, as by said decree is directed.

Now, know ye, that by virtue of the power and authority on me conferred by the decree aforesaid, and of every other power [in] me hereunto enabling, and in consideration of the said sum of forty thousand dollars to me paid, and secured to be paid, according to the terms of said decree, I have granted, bargained, sold, conveyed, and delivered, and do hereby grant, bargain, sell, convey, and deliver, unto the said John Bloodgood, Philip McLoskey, Jonathan Hunt, and Henry Hitchcock, their heirs and assigns, the said above described tracts of land, situate, lying, and being within the corporate limits of the city of Mo-

bile, and bounded as above described, together with all the privileges and appurtenances to the same belonging, or in any wise appertaining.

To have and to hold the said above described lot of land and premises unto the said John Bloodgood, Philip McLoskey, Jonathan Hunt, and Henry Hitchcock, their heirs and assigns, to the only proper use, benefit, and behoof of the said John Bloodgood, Philip McLoskey, Jonathan Hunt, and Henry Hitchcock, their heirs and assigns, forever.

In testimony whereof I have hereto set my hand and seal, at the city of Mobile, this fifth day of May, in the year of our Lord one thousand eight hundred and thirty-one.

JAMES INNERARITY. [SEAL.]

Signed, sealed, and delivered, in presence of—
SAM'L ACRE,
J. F. ROSS,
J. G. LYON.

THE STATE OF ALABAMA, *Mobile county:*

Be it remembered, that on this fifth day of May, in the year 1831, James Innerarity appeared personally before me, James G. Lyon, clerk of the circuit court of Mobile county, who acknowledged that he signed, sealed, and delivered the within deed to the said John Bloodgood, Philip McLoskey, Jonathan Hunt, and Henry Hitchcock, on the day and year therein mentioned.

Given under my hand and seal, this 5th May, 1831.

J. G. LYON. [SEAL.]

THE STATE OF ALABAMA, *Mobile county, ss:*

I, Drury Thompson, clerk of the county court of said county, certify, that the foregoing is a transcript of the record of a deed from James Innerarity to John Bloodgood, Philip McLoskey, Jonathan Hunt, and Henry Hitchcock, as recorded in my office in book K, pages 88 and 89.

Given under my hand and seal of office, this sixth day of March, A. D. 1845. D. THOMPSON, *Clerk.*

And afterwards, to wit, on the thirteenth day of April, in the year of our Lord one thousand eight hundred and forty-seven, being a day of a term of said court, begun and held in and for said district at Mobile, on the second Monday of April, A. D. 1847, the following decree was rendered by the court aforesaid, to wit:

SIDNEY E. COLLINS
vs.
THE HEIRS and executors of Joshua Kennedy. } 2957.

This cause this day came on to be heard, and it is ordered, adjudged, and decreed, that the deeds of Sidney E. Collins and his brother George Collins to William Kitchen be set aside, and that the representatives of Joshua Kennedy account for the rents and profits received from the said south half of the said lot of land, and also the money derived from the

sale of any portion thereof, together with interest thereon, and that the said representatives be allowed for all permanent improvements made on the said land; also the money paid to Sidney E. and George Collins with interest; and that it be referred to the master to take an account between the parties, in conformity to the principles of this decree.

Opinion.

SIDNEY E. COLLINS
vs.
THE HEIRS and executors of Joshua Kennedy.

The argument in this cause was distinguished by deep research and great ability. It will not, however, be necessary for me to determine all the points of law which were raised by counsel. I shall decide such only as are necessary, according to my view of the case, to determine it upon its merits. The first question in the cause is, whether the complainant, S. E. Collins, is entitled to represent Joseph Collins, deceased, either as his devisee or heir. To show his right as devisee, he relies upon the will of his father, Joseph Collins, which was admitted to probate in 1813, in the county of Jackson, in the Territory of Mississippi, which included the tract of country in which Joseph Collins resided in his lifetime, and in which he died. The now State of Alabama, at that time, constituted also a part of the Mississippi Territory, and the county court of Jackson, in which the will was admitted to probate, had jurisdiction of the cause, and the probate is duly proved, according to the act of Congress in relation to the authentication of records.

It is, however, insisted by the respondents, that the will was improperly admitted to probate, inasmuch as Joseph Collins died 1811, while this tract of country remained under the jurisdiction of the Spanish government, and the Spanish law required the attestation of seven witnesses, in order to establish the validity of a will, whereas there were only three subscribing witnesses to the will of Joseph Collins. The law read by the defendants' counsel did not fully establish this position. That law required that when the witnesses were strangers, seven would be necessary to establish the validity of a will; but whether the witnesses to Collins's will were or were not strangers, was not proved. But whether the will was properly or improperly admitted to probate cannot be determined by this court. The probate by a court of competent jurisdiction is conclusive upon all points until that probate be reversed or set aside. In the case of Tarver vs. Tarver, 9th Peter's reports, 180, that court say, "and the bills cannot be sustained on the allegation that the probate is void. An original bill will not lie for this purpose. If any error was committed in admitting the will to probate, it should have been corrected by appeal. This is provided for by the law of Alabama, which makes the county court in each county an orphan's court for taking the probate of wills, &c., and declares that, if any person shall be aggrieved by a definitive sentence, or judgment, or final decree of the said orphan's court, he may appeal therefrom to the next term of the

supreme court in chancery, or in the district of Washington, to the superior court of that district. The law also provides that any person interested in such will may, within five years from the time of the first probate thereof, file a bill in chancery to contest the validity of the same, and the court of chancery may thereupon direct an issue or issues in fact, to be tried by a jury as in other cases. But that, after the expiration of five years, the original probate of any will shall be conclusive and binding upon all parties concerned, with the usual savings to infants, femes covert, &c."

The law of Mississippi upon this subject is the same as the law of Alabama, above referred to by the supreme court.

Other authorities might be cited to the same point from the court of appeals in Virginia, and the chancery court in Mississippi, but the decisions of the Supreme Court of the United States is conclusive upon this court, and it is bound to consider the will of Joseph Collins duly proved, and properly admitted to probate by the county court for the county of Jackson in the then Territory of Mississippi. Can this court regard the probate made in Jackson county, that county being now in the State of Mississippi? The authority cited from Cranch meets and decides this question. In that case a will was admitted to probate in the district of Kentucky while it constituted a part of Virginia. The Supreme Court of the United States decided that the probate made in the district of Kentucky was properly admitted as evidence in a court in Virginia after Kentucky was created an independent State. The question decided by the Supreme Court is analogous to the one now under discussion, and of course decides it. This court must, therefore, consider that the will of Joseph Collins is properly proved as evidence in this cause; by that will Joseph Collins devised his real estate to the complainant and his two brothers, now deceased, and they were in the opinion of the court entitled to hold it as his devisees.

It being determined that the complainant is entitled to represent Joseph Collins as devisee, it might be unnecessary to determine whether the marriage of Joseph Collins to Elizabeth Wilson, his mother, was or was not lawful; more especially as our statute authorizes the complainant to inherit from his deceased brothers, even though illegitimate. But the question involves deeply the feelings of the complainant, and has been most elaborately discussed. The court will, therefore, without attempting to follow the learned arguments of council, succinctly state its own conclusions.

The council of Trent passed an ordinance that all marriages should be solemnized in the presence of a priest, and declared all marriages not thus celebrated null and void, and the issue of such marriages illegitimate, but that the ordinance should take effect only from its publication in each State or county. The regulation of contracts, including those of marriages, appertains to the sovereign power of each State, and the bishops assembled at Trent were not the sovereigns of the countries for which they attempted to prescribe laws, and it has not been shown that in passing this ordinance they exercised a divine right. The ord-

nance was, therefore, without any obligatory force. Some of the sovereigns of Europe ordered the ordinance to be published in their dominions, but Philip the II, King of Spain, although he ordered its publication, gave special orders to his ministers that it should have no effect in derogation of the prerogatives of the crown.

It does not appear that the ordinance was ever published, or ordered to be published, in the American possessions of the King of Spain; it therefore, by its terms, had no force in those possessions; but the King of Spain adopted for the government of those possessions, under the name of the Indies, the laws of Castile. By those laws, consent alone was sufficient to constitute a valid marriage contract. See the Partedos.

The evidence proves that Joseph Collins was married to Elizabeth Wilson, the mother of the complainant, in 1805 or 1806, by Mr. White, the syndic in the parish of Pascagoula, in which the parties resided; that the marriage took place in the presence of several witnesses, and that Joseph Collins and Elizabeth Wilson afterwards, until the death of Joseph Collins in 1811, lived together as husband and wife, and for a part of the time in the house of the syndic; and that, during the time which elapsed from the marriage to the death of Joseph Collins, the complainant and his two brothers were born. From the law and the evidence, I have no doubt that Joseph Collins was lawfully married to Elizabeth Wilson, and that the issue of that marriage are legitimate. In relation to the contract of William E. Kennedy and Joseph Collins, to divide the lot of land now in controversy, I do not consider it necessary to go further back than the deed from Wm. E. Kennedy to James Innerarity, administrator of Joseph Collins. It is alleged by the respondents, that there is no consideration for this deed, which will be regarded in a court of equity; the deed shows that Joseph Collins and Wm. E. Kennedy, as purchaser from Alexander Baudain, had conflicting claims to the tract of land in question, and in order to settle the dispute between them they agreed, in 1806, to divide the land equally, Collins taking the southern half; and that, in order to carry into effect this agreement, and for the consideration of one dollar, Kennedy conveys to Innerarity, administrator of Joseph Collins, the southern half of the said lands. If there had been no new consideration, the consideration set forth in the preamble to the deed would have been sufficient to support it. The compromise of a doubtful, even though it should ultimately appear that the party had no right, would be a good consideration for a deed. It is insisted that the paper annexed to the deed, purporting to be articles of agreement between Wm. E. Kennedy and Joseph Collins, is of no validity, inasmuch as it is not signed by Joseph Collins. A good and sufficient consideration being stated in the deed, it is not necessary, or perhaps proper, that this court should look beyond the deed to see whether the party acknowledging a consideration is bound by it. The authorities relied upon by the respondents to show, that a court of equity will not enforce a specific performance when the consideration is inadequate, do not apply to this deed. The authorities apply to an executory contract, but this deed is an executed contract,

and a deed for the consideration of one dollar will pass the title to lands as well in a court of equity as in a court of law, except when the transaction is impeached for fraud. The deed from Kennedy to Innerarity was, therefore, sufficient to convey, and did convey, the title of Kennedy to the lands in question. The respondents allege, that prior to the date of the deed from Kennedy to Innerarity, the 2d of March, 1820, Kennedy conveyed the same land to Samuel Kitchen, to wit, on the 27th of January, 1820, and thus nothing passed by the deed to Innerarity. The evidence satisfied my mind, that the conveyance to Samuel Kitchen was for the benefit of Joshua Kennedy; that Kitchen was a third person, interposed for the benefit of Kennedy, and that the conveyance is to be considered as made to Joshua Kennedy.

If it were doubtful, from the other evidence, whether it should be thus considered, the facts that Joshua Kennedy took from Kitchen a covenant to convey the land whenever requested, to him or his heirs, which he held over Kitchen, that although the covenant on its face showed that it was for a valuable consideration, yet there was no proof that any was paid; and also, that Joshua Kennedy sold a portion of this property [to] Chicasola and Krebbs, while the title was in Samuel Kitchen's [name,] leave no room to doubt that Kitchen was interposed for the benefit of Kennedy.

Joshua Kennedy was a witness to the deed from Wm. E. Kennedy to Samuel Kitchen, dated January 27th, 1820, and also to the deed from Wm. E. Kennedy to James Innerarity, administrator of Joseph Collins, dated 2d of March, 1820. Joshua Kennedy having a deed from Wm. E. Kennedy to himself, (to Kitchen for him,) and afterwards witnessing a deed for the same land from Wm. E. Kennedy to Innerarity, without communicating to Innerarity information of his prior title, is fully held, according to the well settled principles of law, to have waved his title [in] favor of Innerarity; for otherwise Joshua Kennedy would have assisted Wm. E. Kennedy in committing a fraud upon the administrator of Joseph Collins. This rule of law supersedes the necessity of deciding the question which was discussed at the bar, and touching which there was much evidence, whether the deed from Wm. E. Kennedy to Kitchen was antedated, so as to overreach the deed from Wm. E. Kennedy to Innerarity.

It is accordingly the opinion of the court, that the deed from Wm. E. Kennedy to Samuel Kitchen interposed no obstacle to the passing of the title to the land in question to Innerarity, in virtue of the deed dated 2d March, 1820. The next question to be determined is, whether Wm. Kitchen acquired any title to the land in question in virtue of the decree of the court of chancery and the deed from Innerarity to him. The bill and answer in the chancery proceedings were not produced, and it was stated that they were lost from the records in the court of chancery. If they had been produced, they might have given a different aspect to the proceedings from that which it now bears, and probably more favorable to the parties to the chancery suit. In the absence of the bill and answer, the evidence fully shews that Joshua Kennedy and James In-

nerarity colluded together to defraud the heirs of Joseph Collins. Joshua Kennedy desired to acquire title to the land in question, which was of great value, for a very inadequate consideration; and for this purpose he instituted [suit] in the chancery court, in the name of Wm. Kitchen, without his consent or knowledge. Innerarity claimed, as due to the house of John Forbes & Company, of which he was a member, about twenty-two hundred dollars from the estate of Joseph Collins. Joshua Kennedy paid this sum to Innerarity, and obtained from him a deed to the land, in pursuance of the decree of the court of chancery. It is manifest, from this state of the evidence, that the interest of the heirs of Collins was sacrificed to the individual interest of Joshua and James Innerarity. The decree of the court of chancery, if it affected the rights of the heirs of Collins, was therefore obtained by fraud, and must be regarded as inoperative. But the decree does not, by its terms, affect the rights of the heirs of Collins, but Innerarity alone. A conveyance by James Innerarity to Joshua Kennedy, or to Wm. Kitchen for him, whether made by Innerarity voluntarily, for a consideration personal to himself, or in virtue of the decree of the court of chancery, which affected him alone, would have conveyed to Kennedy the title, subject to the trust for the benefit of the heirs of Collins; because the evidence abundantly proves that Kennedy had knowledge of the trust at the time of the conveyance.—See 16 Peters, Pyatt and others. I consider it sufficiently proved that the conveyance to Wm. Kitchen was for the benefit of Joshua Kennedy, and that it is to be considered as made to Kennedy. In 1827, Kennedy purchased of one of the living heirs of Joseph Collins, and in 1830 of the other, their right to the land in question, and took the title in the name of Wm. Kitchen. It appears from the evidence that Sidney E. Collins and his brother had just arrived at lawful age, and that they were ignorant of their rights and of the value of the estate; that Kennedy had represented their claim to the land as worthless; and that he had, by various arts, complicated the title, and by a multitude of conveyances to third persons, intended for his benefit, obscured their rights; that he represented to them that he was induced, by a regard for the memory of their father alone, to offer them anything for their claim. These facts make a strong appeal to a court of equity for relief. In such a case, no court of equity has ever refused relief to a cestui que trust against his trustee, where the application was made to it in a reasonable time.

It is alleged by the respondents, that a court of equity ought not to grant relief, even if proper, after the acquiescence of the complainant from the date of his deed to the institution of this suit. On the contrary, it is asserted by the complainant, that he was ignorant of the fraud of Kennedy until a short time before he commenced his suit. The conveyances were dated in 1829 and 1830, and the suit was instituted in 1844; between those dates a period of 14 or 15 years has elapsed. It is decided by the Supreme Court of the United States that, where fraud has been practised in obtaining a conveyance, the party defrauded may apply to a court of equity for relief at any time within 30 years, or

within the lifetime of one of the parties. In the case of Michoud et al., vs. Girod et al., 4th Howard's Reports, 503, the Supreme Court of the United States decide that, "although courts of equity generally adopt the statutes of limitations, yet, in a case of actual fraud, they will grant relief within the lifetime of either of the parties upon whom the fraud is proved, or within thirty years after it has been discovered or become known to the party whose rights are affected by it." The right of the complainant, therefore, to relief in a court of equity, is not barred by the lapse of time.

The next question is, whether the claim of Wm. E. Kennedy to the tract of land or lot derived from Alexander Baudain has been confirmed by an act of Congress? Congress, by their act of the *of the* 3d of March, 1819, acted upon the report of Commissioner Crawford upon land claims, but not upon lots lying in the city of Mobile. By that act all persons whose claims had been rejected, whether to lands or lots, were allowed until the first of July, 1820, to adduce additional evidence in support of their claims; and persons who had omitted to file their claims were allowed until that time to file them. By the report of Commissioner Crawford the claim of Wm. E. Kennedy to the lots in question was rejected. The claimant adduced before the register additional evidence in support of his claim, which was reported to the Commissioner of the General Land Office, and by him laid before Congress. Congress, by their act of the 8th of May, 1822, for the first time acted upon the report of Commissioner Crawford upon town lots, together with the additional evidence reported by the register; and at the same time, and by the same act, they acted upon the new claims reported upon by the register and receiver. The register was not authorized to make any report upon the claims submitted to the Commissioner, except of the evidence taken by him. Accordingly, in the case of Wm. E. Kennedy's claim, derived from Baudain, the report of the register, not register and receiver, is headed "Register of evidence taken." By the additional evidence taken it appeared that Kennedy had improved the lot so as to prevent the forfeiture; and accordingly Congress, by their act of the 8th of May, 1822, confirmed his claim according to the report of it. According to what report? The report of Commissioner Crawford upon town lots was then before them, together with the additional evidence reported by the register, and was the only report upon that claim which was before them. By that report it appears that Wm. E. Kennedy claimed under Alexander Baudain seven arpens; of course the quantity claimed by him is certain and ascertained. Congress, consequently, in confirming the claim reported upon by the Commissioner, confirmed the claim of Wm. E. Kennedy, to the lot in question, to the extent of seven arpens. What effect had that confirmation upon the title of Innerarity, administrator of Joseph Collins, derived from Wm. E. Kennedy by his deed? It is settled law, that if a person having no title to land sell it, and afterwards acquire the title to it, and his deed contain a warranty or a covenant for title, the law, in order to avoid multiplicity of actions, vests in the purchaser the title which seller acquired subse-

quently to the sale. The deed from Wm. E. Kennedy to Innerarity contains covenants for a further assurance and for a perfect title. When, therefore, the act of Congress of the 8th of May, 1822, confirmed the title of Wm. E. Kennedy to the lot derived from Baudain, the legal title, by operation of law, passed to James Innerarity, to so much of said lot as had been conveyed to him by the deed from Wm. E. Kennedy. Accordingly, it is ordered, adjudged, and decreed, that the deeds from Sidney E. Collins and his brother, George Collins, to Wm. Kitchen be set aside, and that the representatives of Joshua Kennedy account for the rents and profits received from the said south half of the said lot of land, and all the money derived from the sale of any portion thereof, together with interest thereon; and that the said representatives be allowed for all permanent improvements made on the said lands, and also for the money paid to Sidney E. and George Collins, with interest; and that it be referred to the master to take an account between the parties in conformity to the principles of this decree.

WM. CRAWFORD.

Mobile, April term, 1847.

And afterwards, to wit, on the fifteenth day of April, in the year of our Lord one thousand eight hundred and forty-seven, being a day of a term of said court, begun and held in and for said district, at Mobile, on the second Monday of April, A. D. 1847, the following proceedings were had, to wit:

SIDNEY E. COLLINS,
vs.
The heirs and executors of Joshua K nedy.

This day came the defendants, by their solicitors, and pray an appeal to the next term of the Supreme Court of the United States from the decree rendered in this cause at a previous day of this term, which said appeal as prayed is granted upon the said defendants entering into bond, with approved security, in the sum of one thousand dollars, conditioned for the payment of the costs. And thereupon the said defendants produce a bond in the said sum of one thousand dollars, with Jonathan Emanuel and William R. Hallett as securities, which is approved and ordered to be filed.

(*Bond.*)

Know all men by these presents, that we, William R. Hallett, executor of Joshua Kennedy, deceased, William R. Hallett and Jonathan Emanuel, all of the city of Mobile, and State of Alabama, are held and firmly bound unto Sidney E. Collins in the penal sum of one thousand dollars, well and truly to be paid to the said Sydney E. Collins, his executors, administrators, or assigns, and to be raised out of our, and each of our, goods and chattels, lands, tenements, and effects; and for which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals respectively, at Mobile, Ala-

bama, on this fifteenth day of April, in the year eighteen hundred and forty-seven.

The condition of the above obligation is such, that, whereas the said Sydney E. Collins did file a bill in chancery, in the circuit court of the United States, for the fifth judicial circuit and southern district of Alabama, against the said William R. Hallett and Robert L. Walker, executors of J. Kennedy, J. H. Hastie and wife, A. R. Meslier and wife, J. G. Aikin and wife, Joshua and Augusta Kennedy, James Campbell, and the Branch of the Bank of the State of Alabama, at Mobile, defendants to said bill; on the hearing of which cause the said court hath rendered a decree, by the hon. William Crawford, judge, granting the relief prayed by said complainant against the said defendants, as by the said decree recorded in said court will more fully appear; from which decree the said defendants have prayed an appeal to the Supreme Court of the United States, which has been allowed on the filing of a bond in the penal sum of one thousand dollars. Now, therefore, if the said defendants shall well and truly prosecute their said appeal to effect, and shall pay and satisfy all such costs and damages as shall be adjudged against them in this behalf, then this obligation to be void, else to be of full force and effect.

W. R. HALLETT, *Executor*, [SEAL.]
W. R. HALLETT, [SEAL.]
J. EMANUEL, [SEAL.]

Witness—OWEN MCMAHON,
J. S. GREEN.

Filed April 15th, 1847. JOHN FITTS, *Clerk.*

UNITED STATES OF AMERICA,
Southern district of Alabama:

I, John Fitts, clerk of the circuit court of the United States, for the fifth judicial circuit and southern district of Alabama, do hereby certify, that the within and beforegoing one thousand and seventy-one pages contain a full, true, and perfect exemplification of the record and proceedings had in a certain cause lately pending and determined in said court, wherein Sidney Eugene Collins was plaintiff, and William R. Hallett and Robert L. Walker, executors of Joshua Kennedy, deceased, John G. Aikin and Clarissa, his wife, John H. Hastie and his wife Secluda, Augustus R. Meslier and his wife, Mary, Augusta Kennedy, Joshua Kennedy, James Innerarity, Samuel Kitchen, William Kitchen, James Campbell, and the Branch of the Bank of the State of Alabama, at Mobile, were defendants, as the same remain on file and of record in said court.

In testimony whereof, at office, in the city of Mobile, I have hereunto set my hand, and affixed the seal of said court, this four-
[L. S.] teenth day of December, in the year of our Lord one thousand eight hundred and forty-seven.

JOHN FITTS, *Clerk C. C. So. Dis. Ala.*

Filed 17th January, 1848.